Dec 5. 1876
Smith 2052
3-442

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 487.

THE LAKE SUPERIOR AND MISSISSIPPI RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 18, 1875.

Dec 9 1876
Remitted
Jos Bradley

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a United States Court of Claims, December term, 1874.

THE LAKE SUPERIOR AND MISSISSIPPI RAILroad Company *against* THE UNITED STATES. } 10293.

Petition.

James Smith, jr., attorney for plaintiff, St. Paul, Minn.

Filed Feb. 22, 1875. J. P.

1 Court of Claims of the United States, December term, A. D. 1874.

THE LAKE SUPERIOR AND MISSISSIPPI RAILroad Company *against* THE UNITED STATES. } Petition.

The petition of the Lake Superior and Mississippi Railroad Company respectfully shows that the said petitioner is a railroad corporation created and existing in the State of Minnesota, under and by virtue of an act of the late Territory of Minnesota, entitled "A bill for an act to incorporate the Nebraska and Lake Superior Railroad Company," approved May 23d, 1857, and duly accepted on the 12th day of September, A. D. 1857, and of the act of the legislature of the State of Minnesota, entitled "An act to amend an act entitled 'An act to incorporate the Nebraska and Lake Superior Railroad Company,'" approved March 8th, A. D. 1861, and of the several legislative acts amendatory thereof, with full power to construct, maintain, and perpetually to operate a line of railroad from and between St. Paul and Lake Superior in said State, and to charge and receive tolls and compensation therefor as a common carrier of persons and property carried over its line of railroad; that said corporation has, in pursuance of said legislative acts, constructed and during all the time hereinafter stated, has operated its said

2 line of railroad from St. Paul to Lake Superior in said State; said line of railroad as so operated connecting with the line of railroad of the Northern Pacific Railroad Company, in Carlton County, in said State, at a point of junction one hundred and thirty-one miles distant from St. Paul aforesaid; that petitioner at its own cost and charges has procured and purchased locomotive engines, ca s, and all the rolling-stock, fixtures, buildings, machinery, structures, and appliances necessary for the transaction of its business as such common carrier, and that the same, together with the services of the employés paid by petitioner, have been used in the transportation for the United States hereinafter mentioned.

Your petitioner further states that the Congress of the United States, by an act entitled "An act making a grant of lands to the State of Minnesota, to aid in the construction of the railroad from St. Paul to Lake Superior," approved May 5th, 1864, did make a grant of lands to said State for the purpose of aiding in the construction of said line of railroad; and that said State, by a legislative act approved February 23l, 1865, conferred upon petitioner, as such corporation, said grant of lands, and that petitioner, having completed and equipped its said line of rail.

road as in said State and congressional legislation provided, has become entitled to the said lands so granted.

Petitioner further shows that, during the months of July, August, September, October, and November, A. D. 1874, and before and since said times, your petitioner has been and is the lessee of the railroad of the Stillwater and St. Paul Railroad Company, extending from the St. Croix River and Lake, at Stillwater, Minnesota, to a junction with said main line hereinbefore mentioned, at White Bear Lake, and thereby forming a connected line of railroad from Lake Superior and St. Paul to Stillwater aforesaid, which said leased railroad has also been as aforesaid operated during the time aforesaid by your petitioner, with its engines, cars, and rolling-stock, and that a portion of the service performed by petitioner, as indicated in Exhibits A and B, hereto annexed, was over and upon said leased road, as in said exhibits indicated.

3 That your petitioner has been and is willing to allow the United States, as in said act of Congress provided and intended, to pass its own engines, cars, and rolling-stock over said line of railroad free of all toll or charge therefor whilst used for the transportation of any property or troops of the United States, which said allowance the officers and agents of the United States have refused, and have hitherto wholly declined and refused to use said railroad as in said congressional act of May 5th, 1864, authorized and intended; that the United States, instead of availing itself of said right and privilege of using said railroad as a common highway, has made requisitions upon your petitioner from time to time for the transportation of troops, property, and supplies, and that during the said year 1874, and between the 30th day of June and the 1st day of December, your petitioner, upon such requisitions, as such common carrier, did carry and transport by and upon its own cars, and by the labor and services of its own employees, the troops and persons so required to be carried and transported, amounting in the aggregate to 590 persons, and that the usual and reasonable compensation therefor amounts in the aggregate to $3,380.00, and that petitioner reasonably deserves to have and receive of the United States that amount; that Exhibit A, hereto annexed, contains the number of the requisition; second, the place from; and third, the name of the place to, which said several persons were transported; the number of persons carried under each requisition, amount or rate showing the regular fare for each person between the points named, and the amount due and payable upon each requisition, and for the same. Petitioner herewith files the original requisitions, with the proper certificates and approvals thereof, (which requisitions, so filed herewith, are substantially in the form of Exhibit C attached, the necessary variations of time, number of persons, etc., therein appearing.)

That petitioner in like manner, by its own cars and employees, upon requisitions duly made by the United States, did transport over

4 its said main line and leased railroad aforesaid, from time to time, military supplies, subsistance, equipage, and property of the United States, between the first day of July and the first day of December, A. D. 1874, to the amount and aggregate value of $6,218.74, which said sum of $6,218.74 is the usual and reasonable amount and value of the services and transportation so actually furnished upon said requisitions. A true and correct statement thereof, showing the date of furnishing the same, the place from and to which such shipments were made, the name of consignee, description of articles, rate of charges, and amount chargeable, is hereto annexed, marked "Exhibit B," and made part hereof. Petitioner also herewith files the original bills of

lading and receipts, showing the shipment and delivery of the property aforesaid, named in said Exhibit B, and annexes hereto one of said bills of lading marked "Exhibit D," the same indicating the general form of said bills of lading.

Your petitioner further represents that there is due from the United States to petitioner, by reason of the premises aforesaid, the sum of nine thousand five hundred and ninety-eight dollars and seventy-four cents, ($9,598.74,) with interest from and after December 1st, 1874; that the same is due as aforesaid and wholly unpaid; that to the best of the knowledge and belief of petitioner it is not denied upon the part of the United States that the transportation to the amount and value aforesaid has been furnished, but, on the contrary thereof, the same is admitted; that due application for the payment of the same has been made by petitioner to the proper authorities of the United States, who have refused payment thereof, by reason of the provisions of the act of Congress, entitled "An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes," approved June 16th, 1874, until the same shall have been adjudicated in this honorable court, as in said last-named act provided and authorized.

Your petitioner further states that its corporators and other
5 members are loyal citizens of the United States, and that your petitioner is a citizen of the State of Minnesota, and that the post-office address of petitioner and of his attorney herein, is "St. Paul, Minnesota."

Wherefore your petitioner prays, that in pursuance of the statutes in such cases made and provided, this court take jurisdiction of this cause, that the charges for the transportation aforesaid be adjudged in favor of petitioner, and that the said sum of nine thousand five hundred and ninety-eight dollars and seventy-four cents may be adjudged to the plaintiff, with interest thereon from December 1st, 1874, at the rate of seven per cent. per annum, and that petitioner have such other and further relief in the premises as the nature of the case may require and as to equity may pertain.

JAMES SMITH, JR.,
Attorney for Plaintiff, St. Paul, Minn.

STATE OF MINNESOTA,
County of Ramsey, ss:

James Smith, jr., being sworn, deposes and says, that he is one of the directors of the Lake Superior and Mississippi Railroad Company, the petitioner in the foregoing proceedings, and the authorized attorney of said petitioner herein, that no assignment or transfer of the claim set up in the foregoing petition, or any part thereof, has ever been made by said petitioner to any person, and that said claimant is justly entitled as above set forth, to the amount so claimed from the United States, after deducting all payments or credits or sets-off to the same, and that the facts stated in said petition are true, as he verily believes.

JAMES SMITH, JR.

Sworn to and subscribed before me this day of December, A. D. 1874.

H. E. MANN,
Clerk Circuit Court of the United States.

6 EXHIBIT A.

U. S. Army, requests for transportation collected by Lake Superior & Mississippi Railroad from July 1st, 1874, to December 1st, 1874.

Number requisition.	From—	To—	Number persons.	Rate.	Amount.
2993	Duluth	St. Paul	1	$7 00	$7 00
2996	"	"	3	7 00	21 00
2999	"	"	2	7 00	14 00
10380	N. P. Junction	"	1		5 90
10382	"	"	1		5 90
10423	St. Paul	N. P. Junction	1		5 90
10502	Duluth	St. Paul	2	7 00	14 00
10505	N. P. Junction	"	4	5 90	23 90
10508	"	"	1		5 90
10511	"	"	2	5 90	11 80
10514	"	"	2	5 90	11 80
10517	"	"	1		5 90
10614	St. Paul	N. P. Junction	1		5 90
10617	"	"	1		5 99
10621	"	"	1		5 60
10623	"	"	1		5 00
10655	"	Stillwater and ret	1		2 00
10664	"	Duluth and return	1		14 00
10675	"	N. P. Junction	1		5 90
10677	"	"	1		5 90
10679	"	Stillwater and ret	1		2 00
10680	"	"	1		2 00
10691	"	N. P. Junction	1		5 90
10693	"	"	1		5 90
10695	"	"	1		5 90
10726	"	"	1		5 90
10832	"	"	1		5 90
39702	N. P. Junction	St. Paul	1		5 90
39716	"	"	1		5 90
39726	"	"	29	5 90	171 10
39936	"	"	1		5 90
10273	St. Paul	N. P. Junction	1		5 90
10286	"	"	1		5 90
10290	"	"	1		5 90
10298	"	"	1		5 90
10376	N. P. Junction	St. Paul	1		5 90
10378	"	"	1	5 90	5 90
10384	"	"	4		23 60
10391	"	"	1		5 90
10393	"	"	1		5 90
10520	"	"	1		5 90
10523	"	"	1		5 90
10526	"	"	2	5 90	11 80
10529	"	"	1		5 90
10532	"	"	2	5 90	11 80
10537	"	"	1		5 90
10630	St. Paul	N. P. Junction	1		5 90
10642	"	"	1		5 90
10644	"	"	2	5 90	11 80
29674	N. P. Junction	St. Paul	2	5 90	11 80
	Amount carried forward		94		$559 80
	Amount brought forward		94		$559 80
39712	N. P. Junction	St. Paul	1		5 90
39714	"	"	1		5 90
39722	"	"	3	5 90	17 70
39735	"	"	1		5 90
39729	"	"	1		5 90
42601	St. Paul	N. P. Junction	7	5 90	41 30
10363	N. P. Junction	St. Paul	1		5 90
10365	"	"	1		5 90
10540	"	"	1		5 90
10543	"	"	1		5 90
10634	St. Paul	N. P. Junction	1		5 90
10729	"	"	1		5 90
29443	N. P. Junction	St. Paul	1		5 90
29446	"	"	1		5 90
29449	"	"	1		5 90
29450	"	"	1		5 90
39707	"	"	1		5 90
397 9	"	"	3	5 90	17 70
39738	"	"	60	5 90	354 00

7

EXHIBIT A—Continued.

Number requisition.	From—	To—	Number persons.	Rate.	Amount.
39750	"	"	26	5 90	153 40
39752	"	"	1		5 90
39758	"	"	1		5 90
39761	"	"	1		5 90
39765	"	"	1		5 90
39768	"	"	1		5 90
39934	"	"	1		5 90
39943	"	"	1		5 90
42603	St. Paul	N. P. Junction	1		5 90
42630	"	"	1		5 90
42632	"	"	1		5 90
42637	"	"	1		5 90
42639	"	N. P. Junc. and ret	1		11 80
42641	"	N. P. Junc. and ret	1		11 80
42664	"	N. P. Junction	1		5 90
42666	"	"	1		5 90
42668	"	"	1		5 90
42677	N. P. Junction	St. Paul	1		5 90
42679	St. Paul	N. P. Junction	1		5 90
42682	"	"	1		5 90
42685	"	"	1		5 90
42690	"	"	1		5 90
10398	N. P. Junction	St. Paul	1		5 90
10400	"	"	9	5 90	53 10
10465	"	"	1		5 90
29684	"	"	2	5 90	11 80
39718	"	"	1		5 90
39740	"	"	61	5 90	359 90
	Amount forward		304		1,810 60
8					
	Amount brought forward		304		$1,810 60
39742	N. P. Junction	St. Paul	117	$5 90	690 30
39744	"	"	1		5 90
39746	"	"	1		5 90
39748	"	"	4	5 90	23 60
39771	"	"	1		5 90
39941	St. Paul	N. P. Junction	1		5 90
47636	N. P. Junction	St. Paul	1		5 90
42673	"	"	1		5 90
42675	St. Paul	N. P. Junction	1		5 90
42695	"	"	1		5 90
42697	"	"	8	5 90	47 20
44929					
			441		2,618 90
39763	N. P. Junction	St. Paul	129	5 90	761 10
			570		$3,380 00

EXHIBIT B.

United States Government to Lake Superior & Mississippi R. R. Company.

For the transportation of Government supplies during the months of July, August, September, October, and November.

Date.	From—	No. W. H.	No. B. L.	Consignee and destination.	Description of articles.	Weight.	Rate.	Am'nt.	Total.
1874.									
August 13	Thompson	5	322	Lieut. E. B. Gibbs	1 car lumber	20,000	.....	$15 25	
17	N. P. Junc.	23	25	Captain A. Barrett	8 boxes clothing	2,550	65	16 58	
17	....do	220	64	Rock Island arsenal	6 boxes ordnance stores	1,625	65	10 56	
17	....do	.....	....	Captain A. Barrett, Jeffersonville	1 box flags	48	65	31	
Sept. 12	....do	157	435½	A. A. Q. M., Fort Abercrombie	3,300 feet lumber	12,000	.....	12 00	
24	Stillwater .	302	462	" "	5,300 "	20,000	.....	12 00	
24	....do	303	....	" "	5,000 feet 1-inch common boards	20,000	.....	12 00	
18	....do	25	79	Captain G. W. Bradley, St. Paul	6 boxes, 1 safe official records, 4 chests	1,911	65	12 42	
26	N. B. Junc.	46	81	Captain I. P. Farley, Rock Island	4 " ordnance stores	626	65	4 07	
October 5	....do	11	4	Commanding officer, " arsenal	1 " "	142	65	92	
5	....do	12	37	" " "	1 " "	463	65	3 01	
5	....do	12	....	Adjutant-General U. S. A	1 " records	29	65	19	
5	....do	12	40	Chief commissary subsistence, St. Paul	4 bdls. bags	179	65	1 16	
6	....do	13	85	Captain O. Hale, St. Louis	4 boxes private baggage	800	65	5 20	
8	....do	19	5	Commanding officer, Rock Island arsenal	1 box ordnance	193	65	1 25	
15	....do	26 *a* 35	39	" Cos. A and E, 7th U. S. Cav	8 cars, horses, and 2 lots company property	207 900	.....	671 35	
15	....do	36 *a* 45	37	" Cos. B and G "	9 " 2 "	227,900	.....	716 35	
15	....do	46 *a* 54	42	" Cos. H and K "	9 "	165,000	.....	392 50	
15	....do	55	45	Major Bell, Co's A, B, E, G, H, K "	1 lot company property and 1 horse	119,400	.....	776 10	
15	....do	62	96	Captain Ludlow, St. Paul	1 box odometer and 1 rubber-bath	70	65	46	
15	....do	62	....	Captain Farley, Rock Island	9 boxes pistols and cartridges, 20 cases ordnance stores.	4,098	65	26 64	
15	....do	62	....	Commanding officer, Rock Island	71 boxes " 22 cases "	10,423	65	67 75	
Nov. 13	....do	19	6	" "	3 boxes ordnance stores	839	65	5 45	
13	....do	20	46	Lieut. L. M. Morris, St. Louis	2 boxes baggage, 1 box pr. records	550	65	3 58	
13	....do	18	108	Ordnance officer, Rock Island	19 boxes ordnance stores	4,556	65	29 62	
July 11	....do	326	235	A. A. Q. M., Fort Wadsworth	1 m. common boards	.....	.....	12 00	
11	Stillwater .	327	....	" "	7,400 feet lumber	21,000	.....	12 00	
11	....do	328	....	" Fort Abercrombie	7,600 "	21,000	.....	12 00	
									$2,832 72
August 5	St. Paul...	65	290	Commanding officer, Company A, 6th Infantry	10 boxes C. C. and G. equipage	2,264	65	14 46	
4	....do	60	....	A. Q. M., Fort Lincoln	1 yawl boat and rudder, 6 oars	750	1 30	9 75	
5	....do	65	293	Lieut. De Rudio, 7th Cavalry, Fort Rice	3 boxes H. H. goods, 4 public records and Q. M. stores.	1,600	65	10 40	

	5	....do		87	297	Post Q. M., Fort Pembina	10 boxes stores and 1 stove castings	1,335	65	8 68	
	6	....do		99	300	A. A. Q. M., Fort Seward	1 box each kettles, mittens, and trowsers	514	65	3 34	
	6	....do		99	....	" " Fort Totten	1 box clothing	1,872	65	12 17	
	7	....do		145a147	307	Lieut. A. E. Smith, 7th Cavalry, Fort Lincoln	15 m. brick, (3 cars)	60,000	17	102 00	
	8	....do		194	....	" " "	2 m. fire-brick	8,00	27	21 60	
	8	....do		193	202	A. Q. M., Fort Lincoln	37 cases white lead, 4 bbls. boiled oil	4,070	27	10 99	
	8	....do		.....	....	" "	1 box putty	1,890	37	6 99	
	8	....do		.....	....	" "	1 box umber, 1 box p. dryer	.....	.....	.....	
	8	....do		.....	....	" "	1 bbl. dryer, 1 box glue	555	55	3 05	
10						" "	4 cases turpentine	320	65	2 08	
						Amounts forward		.....	.....	205 51	2,832 72
August	8	St. Paul...		194	309	Amounts brought forward		.....	.....	205, 51	$2,832 72
	13	....do		194	....	Commanding officer Co. H, 17th Inf'y, Fort Lincoln	6 boxes C. C. and G. equipage	1,914	65	12 44	
	11	....do		238	313	Acting assistant quartermaster, Fort Lincoln	2 boxes and 1 bale C. C. and G equipage	754	65	4 90	
	11	....do		238	....	Post quartermaster, Fort Totten	1 keg nails	106	27	29	
	11	....do		238	....	" " " "	17 p'k'g's mdse., clothing, etc	1,986	65	12 91	
	10	....do		199	319	Acting assistant quartermaster, Fort Pembina	15 p'k'g's tents, etc., clothing, etc	1,567	65	10 19	
	12	....do		244	314	Post quartermaster, Fort Stephenson	1 spring-wagon with lead-bars	3,000	65	19 50	
	12	....do		243	317	Acting assistant quartermaster, Fort Seward	1 box pumps, 11 boxes clothing	2,224	65	14 46	
	13	....do		308	324	" " " " Ripley	3 boxes and 2 bales clothing	614	65	3 99	
	13	....do		301	327	" " " " Seward	3 boxes clothing	748	65	4 86	
	13	....do		308	329	" " " " Ripley	1 box clothing	88	65	57	
	13	....do		301	332	Post quartermaster, Fort Lincoln	1 p'k'g' force-pump	110	65	72	
						Commanding officer Co. G, 20th Infantry, Fort Ripley	12 p'k g's C. C. and G. equipage, 7 bbls. tent-poles.	2, 803	65	18 22	
	13	....do		308	334	Assistant quartermaster, Fort Lincoln	25 roles paper, (p'd)	956	55	5 26	
	13	....do		.....	....	" " " "	7 kegs nail and 1 case white lead	852	27	2 30	
	13	....do		.....	....	" " " "	1 bdl. thimbles, 1 cs. turpentine, 1 cs. oil, 1 bx mdse.	96	65	62	
	17	....do		367	336	" " " " Pembina	1 box hardware	80	55	44	
	19	....do		482	340	Post quartermaster, Fort Totten	1 ventilating-shaft	257	65	1 67	
	18	....do		408	342	" " " "	24 wagon tongues	846	65	5 50	
	21	....do		526	345	United States Subsistence Department, Fort Buford	20 bdls. iron-bunks, 1 bdl. slats, 6 poles	1, 520	65	9 88	
	21	....do		526	....	Post quartermaster, Fort Lincoln	3 p'k'g's forks and scoops, 2 bxs. stationery, 1 bale rope.	{ 90 / 61	55 / 65	1 09	
	20	....do		519	....	Commanding officer Co. B, 20th Infantry, Fort Ripley	1 box knives and heads	{ 50 / 10	37 / 65	07	
	22	....do		595	359	Acting assistant quartermaster, Fort Ripley	8 bxs. C. and G. equipage, 7 bls. tent-poles, 1 bale tents.	2, 257	65	14 67	
	24	....do		599	354	" " " " Lincoln	1 box casting	17	.....	30	
	26	....do		687	352	" " " " Totten	1 box locks, 13 p'k'g's buckets	706	65	4 59	
	26	....do		664	366	Post quartermaster, Fort Ripley	8 p'k'g's axe-handles, clothing, etc	2, 268	65	14 74	
	26	....do		665	356	" " " Pembina	1 box C. and G. equipage	53	65	34	
	26	....do		.....	....	" " " "	14 p'k'g's buckets, 18 doz. brooms	1, 348	65	8 76	
	26	....do		.....	....	" " " "	1 box brushes	80	1 30	1 04	
							1 box foot-lathe	288	55	1 58	

EXHIBIT B—Continued.

Date.	From—	No. W. B.	No. B L.	Consignee and destination.	Description of articles.	Weight.	Rate.	Am't.	Total.
26	....do	665	368	Commanding officer Co. I, 20th Inf'y, Fort Pembina	5 boxes and 2 bales C. C. and G. equipage	1,529	65	9 94	
28	....do	767	371	Assistant commissary subsistence, Fort Pembina	2 bales 9 boxes C. C. and E. equipage	1,200	65	7 80	
28	....do	767	380	Acting assistant quartermaster " "	1 box books	1,675	65	10 89	
31	....do	810	377	Rev. C. W. Featherbridge, Fort Ripley	5 cases private baggage, 1 box mdse	92	65	60	
31	....do	807	378	Major O. H. Moore, 6th Infantry, Fort Buford	1 sewing-machine	680	65	4 42	
				" " " " " " " "		120	1 30	1 56	
Sept. 2	St. Paul...	59	383	Assistant quartermaster, Fort Lincoln	8 dors, 2 bdls. sash	{ 520	55	2 86	416 62
2	....do	59	390	J. B. Ferguson, A. A. S., Fort Totten	1 box medical supplies	{ 208	65	1 35	
2	....do	59	....	E. W. Du Bose, Fort Seward	1 " " "	10	65	07	
						10	65	07	
11				Amounts carried forward				435	3,249 34
Sept. 2	St. Paul...	60	393	Amounts brought forward				$4 35	3,249 34
2	....do	60	....	R. H. Porter, surgeon, Camp Hancock	1 box medicine supplies				
4	....do	103	395	Captain G. B. Dandy. A. Q. M., Fort Lincoln	1 " steam-pump	10	65	07	
4	....do	103	....	A. A. Q. M., Fort Pembina	6 cases blankets	1,171	65	7 61	
5	....do	159	399	W. Turner, surgeon, Port Pembina	1 box medicine supplies	908	65	5 90	
5	....do	159	....	A. A. Q. M., Fort Seward	2 cases blankets	10	65	07	
9	....do	295	406	A. A. Q. M., Fort Totten	5 " 2 bales blankets	308	65	2 00	
9	....do	294	415	Post Q. M., Fort Pembina	7 boxes glass	1,205	65	7 83	
9	....do	295	418	Commanding Officer, Co. D, 20th Infantry, Fort Pembina	8 boxes, 2 bales C. C. and G. equipage, 10 bdls.	422	37	1 56	
9	....do	295	....	A. A. Q. M., Fort Pembina	T. poles.	3,106	65	20 19	
9	....do	295	....	" " "	25 " glass				
10	....do	325	404	" " "	1 box hardware, 10 rolls tarred paper	1,500	37	5 55	
10	....do	325	413	Post Q. M. Fort Lincoln	28 half kegs nails	635	55	3 49	
10	....do	325	....	A. A. Q. M., Fort Buford	1 box C. bolts	2,410	27	6 51	
10	....do	325	....	Captain H. B. Baker, 7th Infantry, Camp Baker	1 letter-press	58	27	16	
10	....do	335	421	Captain J. W. Powell, 6th Infantry, Fort Buford	3 boxes rifles, 14 boxes met. cartridges	96	65	62	
10	....do	324	....	A. A. Q. M., Fort Lincoln	1 box equipments	2,275	65	14 79	
10	....do	324	....	A. A. Q. M., Fort Lincoln	5,000 brick	75	65	49	
11	....do	376	429	A. A. Q. M., Camp Hancock	2,000 "	20,000	17	34 00	
12	....do	433	410	Commanding officer, Co. F, 20th Inf. Fort Pembina	5 kegs nails, 3 boxes glass	8,000	27	21 60	
15	....do	525	401	A. A. Q. M., Fort Pembina	5 boxes clothing	{ 500	27	} 2 02	
15	....do	441	425	Fort Totten	6 " stores	{ 180	37		
15	....do	441	....	A. A. Surgeon J. J. DeLamater, Fort Ripley	2 " great-coats	1,222	65	7 94	
15	....do	441	....	" " "	25 " medicine supplies	1,920	65	12 48	
				" " "	7 crates iron bedsteads, 2 packages brooms	280	65	1 82	
					1 package rollers, slats, 3 R. I. handles				
						3,473	65	22 57	

16	....do	589	434	A. A. Q. M., Fort Buford	3 pairs sleigh-runners, 2 pairs fenders	125	55	69		
16	....do	.....	....	" " "	1 barrel plaster Paris	300	27	81		
16	....do	589	....	U. S. Subsistence Department, Fort Lincoln	10 boxes grate-bars, 1 box bolts and arches	718	27	1 94		
16	....do	.....	....	" " "	2 packages oven-doors and frames	125	65	81		
16	....do	589	437	A. A. Q. M., Fort Buford	5 cases white-lead, 1 box whiting, 1 box sul. zinc.	745	27	2 01		
16	....do	.....	....	" "	1 box colors, 1 box glue	75	55	41		
16	....do	.....	....	" "	3 cases boiled oil	200	37	74		
16	....do	.....	....	" "	1 case turpentine	40	65	26		
17	....do	608	439	U. S. Subsistence Department, Fort Lincoln	26 barrels vinegar, 114 boxes soap	19,080	37	70 60		
17	....do	614	....	" " "	58 barrels pork	19,140	27	51 68		
17	....do	612	....	" " "	98 sacks bacon	17,550	27	47 39		
17	....do	611	....	" " "	98 " "	17,552	27	47 39		
17	....do	617	....	" " "	75 barrels sugar	21,780	27	58 81		
17	....do	618	....	" " "	84 barrels beans	20,000	27	54 00		
17	....do	610	....	" " "	103 bags coffee, 25 barrels corn-meal	19,165	27	51 75		
17	....do	613	....	" " "	59 barrels pork	19,470	27	52 57		
17	....do	619	....	" " "	30 barrels F. salt, 1 barrel T. salt, 41 cases lard	12,711	55	33 96		
18	....do	648	....	" " "	74 boxes candles	3,478	55	19 13		
18	....do	.....	....	" " "	1 bales bacon, 17 bags hams	2,553	27	6 89		
19	....do	701	....	" " Fort Stevenson	1 box commissary property	235	65	1 53		
				Amounts carried forward		.....	.....	686 99	3,249 34	
12										
Sept.				Amounts brought forward		.....	.....	$686 99	$3,249 34	
17	St. Paul...	609	439	United States Subsistence Department, Fort Lincoln	18 boxes pepper	576	55	3 17		
17	....do	.....	....	" " "	167 cans tomatoes, 42 cans peaches, 38 cans milk.	12,844	65	83 49		
17	....do	.....	....	" " "	5 half chests tea	326	65	2 11		
17	....do	.....	....	" " "	8 bbls. sugar, 6 bags coffee, 40 kgs. molasses, 20 cs. syrup.	6,468	37	23 94		
17	....do	.....	....	" " "	2 boxes B. C. soda	113	27	31		
17	....do	615	....	" " "	8 bbls. rice	1,955	37	7 23		
17	....do	.....	....	" " "	10 " hominy, 21 boxes yeast powder	2,965	55	16 31		
17	....do	.....	....	" " "	21 boxes tobacco, 4 boxes cheese, 1 box peas	2,962	65	19 25		
17	....do	.....	....	" " "	2 " cinnamon	28	55	15		
17	....do	.....	....	" " "	5 " starch	235	37	87		
17	....do	.....	....	" " "	50 bbls. sugar	14,543	27	39 27		
17	....do	616	....	" " "	16 " beans, 16 bbls. peas	8,041	37	29 75		
17	....do	.....	....	" " "	25 " corn-meal	5,500	27	14 85		
17	....do	.....	....	" " "	8 cans pickles, 1 case crackers, 12 cans jelly	1,583	65	10 28		
17	....do	.....	....	" " "	4 pkgs., 8 boxes maccaroni	252	65	1 64		
17	Stillwater	224	443	Department quartermaster, Fort Buford	2,000 feet lumber	9,000	.....	15 00		
19	St. Paul...	702	448	Captain J. S. Poland, 6th Infantry, Fort Lincoln	3 boxes rifles, 14 boxes cartridges	2,292	65	14 90		
19	....do	701	450	Captain W. Bryant, 6th Infantry, Fort Buford	3 " 13 "	2,138	65	13 90		
19	....do	701	....	Lieut. D. M. Lee, 6th Infantry, Fort Stevenson	3 " 14 "	2,282	65	14 84		
19	....do	702	....	Captain E. B. Ames, 6th Infantry, Fort Buford	3 " 13 "	2,147	65	13 95		
23	....do	292	453	A. A. Q. M., Fort Pembina	17 bdls. blinds and sash, 3 bales clothing	2,507	65	16 30		
23	....do	792	467	Post Q. M., "	1 box P. G. report-books	20	65	13		
23	....do	800–1	477	A. C. S., Fort Buford	200 bbls. flour	43,200	p. bbl. 65	88 00		
24	....do	834	475	" "	7 cases, 1 bbl. subsistence stores	580	44	3 77		

EXHIBIT B.—Continued.

Date.	From.	No. W. B.	No. B. L.	Consignee and destination.	Description of articles.	Weight.	Rate.	Am't.	Total.
24	....do	855	471	United States Subsistence Department, Fort Totten.....	53 " canned fruits, &c., 1 box extracts, 20 bx. cheese.	3,798	65	24 69	
24	....do	.....	....	" " "	84 bales bacon.....	11,213	27	30 28	
24	....do	.....	....	" " "	8 sacks peas, 2 sacks coffee, 7 half bbls. sugar.	.....	.....	.....	
24	....do	.....	....	" " "	8 half kegs syrup, 4 kegs molasses.....	2,866	37	10 60	
24	....do	.....	....	" " "	20 sacks hams.....	2,030	55	11 17	
24	....do	.....	....	" " "	1 box soda, 3 sacks salt.....	331	27	90	
25	....do	882	....	" " "	4 " mustard	92	55	51	
25	....do	882	....	" " "	2 " tobacco.....	183	65	1 19	
25	....do	882	446	" " "	6 half bbls. vinegar.....	1,320	37	4 88	
25	....do	.....	....	Commanding officer Co. E, 20th Inf'try, Fort Totten.....	2 bales B. bacon.....	248	27	67	
25	....do	882	456	Captain J. H. Patterson, 20th Infantry, Fort Seward.....	6 boxes clothing.....	1,495	65	9 72	
25	....do	882	463	A. A. Q. M., Fort Seward.....	2 " cartridges	150	65	98	
25	....do	.....	....	" Camp Hancock.....	3 sets sleigh-bobs.....	2,250	65	14 63	
25	....do	882	465	" "	1 grindstone.....	44	27	12	
25	....do	.....	....	" Fort Seward.....	1 box grindstone-fixtures	10	55	06	
25	....do	.....	....	" "	1 bdl. buck-saws.....	46	65	30	
25	....do	.....	....	Captain J. H. Patterson, 20th Infantry, Fort Seward.....	1 box hardware.....	10	55	06	
				Lieutenant C. O. Bradley, Fort Totten.....	1 " revolvers	78	65	51	
				Captain H. H. Harbach, "	1 case oil, 2 cases merchandise, 1 crock butter.	254	65	1 65	
				Amounts carried forward.....	1 " 1 box merchandise.....	375	65	2 44	
13 Sept. 28	St. Paul...	934	476½	Amounts brought forward.....	.....	.....	.....	1,235 76	3,249 34
28	....do	934	493	A. A. Q. M., Fort Ripley	1 box clothing.....	.....	.....	$1,235 76	$3,249 34
29	....do	1,004	484	" "	1 case circular saws, 1 tap, 1 bundles lace lea.	122	65	79	
29	....do	.....	....	United States Subsistence Department, Fort Pembina	29 bales bacon, 4 sacks hams	153	65	1 00	
29	....do	.....	....	" " "	3 sk. peas, 5 hf. bbls. vin., 5 hf. kegs syrup, 4 kegs mol.	4,089	27	11 04	
29	....do	.....	....	" " "	3 box, tob., 10 cs. crocks, 6 cas. g. corn, 12 box cheese.	2,286	37	8 46	
29	....do	1,004	497	" " "	2 " mustard, 7 cases lard	2,088	65	13 57	
26	....do	905	490	Post Q. M., Fort Pembina.....	1 " h. p. machinery, 3 boxes h. p. treadles.	579	55	3 18	
30	....do	1,034	....	United States Subsistence Department, Fort Buford	105 barrels common flour	527	65	3 43	
30	....do	.....	....	A. A. Q. M., Fort Lincoln.....	7 bundles bed-sacks, 10 bundles tents and flies.	22,680	bbl. 44	46 20	
30	....do	.....	....	" "	8 boxes shelter-tents, 6 boxes tent-poles	.....	.....	.....	
30	....do	.....	....	" "	1 box books, 1 box drawers, 1 box guiders and cases.	5,263	65	34 21	
30	....do	.....	....	" "	12 boxes axes	1,353	37	5 01	
				.....	29 boxes axe-handles and shovels	2,650	55	14 58	
									1,377 23

October	1	....do	12	503	United States Subsistence Department, Fort Lincoln	40 barrels flour	8,640	27	23 33		
	1	....do	13a14	513	" " Fort Stevenson	165 " "	35,640		75 46		
	2	....do	89	505	" " Fort Ripley	18 " "	3,888	27	10 50		
	2	....do	59	508	" " Fort Pembina	15 " "	3,240	27	8 75		
	3	....do	136	482	" " Fort Ripley	6 boxes tobacco, 23 cases canned fruits, &c	2,376	65	15 44		
	3	....do	.....	....	" " "	1 package soap, 2 boxes mustard, 1 box ginger	.....	.....	.....		
	3	....do	.....	....	" " "	1 case mac., 1 case cream tartar, 3 cases lard	414	55	2 28		
	3	....do	.....	....	" " "	26 bales bacon, 4 sacks hams, 1 sack salt, 1 box soda.	3,908	27	10 55		
	3	....do	.....	....	" " "	11 half bbls. vinegar, 1 sack coffee, 4 half bbls. sugar.	.....	.....	.....		
	3	....do	129	487	" " "	6 kegs syrup, 1 kitt mackerel, 1 box starch	3,443	37	12 70		
	3	....do	.....	....	" " Fort Seward	12 bales bacon, 4 sacks hams	2,032	27	5 49		
	3	....do	.....	....	" " "	9 cases, 1 box crackers, 1 case and 3 boxes cheese.	1,222	65	7 94		
	3	....do	.....	....	" " "	6 kitts mackerel	192	37	71		
	3	....do	130	495	Commanding Officer, Co. K, 20th Inf., Fort Totten	3 cases lard	229	55	1 26		
	3	....do	131	501	United States Subsistence Department, Fort Totten	4 boxes c. and g. equipage	1,247	65	8 11		
	3	....do	.....	....	A. Q. M., Fort Totten	25 barrels flour	5,400	27	14 58		
	3	....do	130	511	Lieut. Col. L. C. Hunt, 20th Infantry, Fort Totten	1 box lanterns	40	65	26		
	3	....do	136	519	United States Subsistence Department, Fort Ripley	1 " lariats	137	65	89		
	3	....do	.....	....	" " "	11 barrels pork, 21 barrels sugar, 23 boxes soap.	10,530	37	38 96		
	3	....do	.....	....	" " "	21 sacks corn meal, 11 boxes candles	.....	.....	.....		
	3	....do	.....	....	" " "	4 boxes yeast powder	2,791	55	15 35		
	3	....do	.....	....	" " "	3 sacks rice, half chest tea	383	65	2 49		
	3	....do	130	529	Commanding Officer, Co. A, 20th Inf., Fort Seward	5 barrels coarse salt	1,520	27	4 10		
	5	....do	169	530	Seventh United States Cavalry, Fort Lincoln	1 box and 2 bales clothing and equipage	721	65	4 69		
	5	... do	174	....	" " "	10 cavalry horses	20,000	.....	45 00		
	5	....do	.....	....	" " "	25 boxes ordnance stores, general property and records.	.....	.....	.....		
	5	....do	.....	....	" " "	4 desks, 8 chairs, 7 tables	4,234	65	27 52		
						7 bdls. h. h. gds, 10 bdls. bed-pcs, 3 bur., 1 lou., 3 h. baths.	980	130	12 74		
					Amounts carried forward				$349 14	4,626 57	
14											
					Amounts brought forward				$349 14	$4,626 57	
October	3	St. Paul..	125	525	United States Subsistence Department, Fort Pembina	100 bbls. flour	21,600	bl.44	44 00		
	5	....do	156	....	" " "	35 "	7,560	27	20 41		
	6	....do	193	....	" " "	1 half chest tea, 5 bbls. common salt	{ 60	{ 65			
	7	....do	217	....	" " "		{ 1,525	{ 27	4 51		
	7	....do	.....	....	" " "	20 bbls. pork, 15 bbls. sugar, 15 bxs. soap	11,672	37	43 19		
	7	....do	.....	....	" " "	3 boxes candles	144	55	79		
	3	....do	131	521	" " "	6 sacks rice	606	65	3 94		
	3	....do	131	....	" " Totten	11 bbls. common salt	3,363	27	9 08		
	6	....do	203	....	" " Seward	2 " "	616	27	1 66		
	6	....do	203	....	" " "	10 sacks corn meal, 3½ chests tea	1,011	55	5 56		
					" " Totten	51 " 1½ "	{ 216	{ 65	{ 1 40		
							{ 5,111	{ 37	{ 18 91		

EXHIBIT B—Continued.

Date.	From—	No. W. B.	No. B. L.	Consignee and destination.	Description of articles.	Weight.	Rate.	Am't.	Total.
7	....do	218	....	" " "	29 bbls. sugar, 26 bxs. common soap.....	{ 79 { 10,363	{ 65 { 37	{ 51 { 38 34	
7	....do	.....	....	" " "	24 bxs. candles.....	1,152	55	6 34	
7	....do	219	....	" " Seward.....	10 bbls. sugar, 10 bxs. common soap.....	3,260	37	12 07	
7	....do	.....	....	" " "	8 bxs. candles.....	384	55	2 11	
6	....do	294	523	A. Q. M., Fort Lincoln.....	1 newel post, 5 bxs. balusters.....	.....	.....	.....	
6	....do	.....	....	" " "	2 bdls. hand-rails, 1 box 2 h. r. twists, 1 cap casing.	316	55	1 74	
6	....do	204	533	A. A. Surgeon, D. F. A. Davis, Fort Rice.....	3 chests medical supplies	600	65	3 90	
8	....do	250	538	United States Subsistence Department, Fort Pembina	15 sacks beans	1,830	37	6 77	
8	....do	250	539	" " Ripley.....	10 "	1,220	37	4 51	
8	....do	250	540	" " Totten.....	40 "	4,880	37	18 06	
9	....do	311	541	" " Rice.....	100 bbls. flour.....	21,600	bl. 44	44 00	
9	....do	312	543	" " Lincoln.....	100 "	21,600	bl. 44	44 00	
15	....do	550	547	Post Q. M., Fort Lincoln.....	1 bdl. hay-forks.....	20	55	11	
15	....do	.....	....	Lieutenant H. Eckerson, Fort Lincoln.....	1 chest clothing, 1 box bedding, &c., 1 box pictures.	570	65	3 71	
15	....do	.....	....	A. Q. M., Fort Lincoln.....	1 box "	298	65	1 94	
15	....do	.....	....	Captain Benteen, 7th Cavalry, Fort Rice.....	1 box nails.....	129	37	48	
15	....do	.....	....	Captain J. Baker, 6th Infantry, Fort Lincoln	3 bxs. rifles, 13 bxs. cartridges.....	2,168	65	14 09	
15	....do	.....	....	United States Subsistence Department, Fort Buford.....	3 pkgs. corn-mill and fixtures.....	.....	.....	.....	
15	....do	.....	....	" " "	6 bxs. oysters, 1 box Worcestershire sauce, &c.	820	65	5 33	
15	....do	.....	....	" " "	2 tierces hams, 2 bbls. salt, 1 box cracked wheat.	1,518	27	4 10	
15	....do	.....	....	" " "	4 bxs. c. soap, 2 bxs. toilet soap, 1 box cranberries.	294	55	1 62	
15	....do	551	549	" " Totten	26 bags coffee, 8 half kegs molasses.....	4,002	37	14 81	
15	....do	.....	....	" " "	3 bxs. pepper	102	55	56	
15	....do	.....	....	" " "	8 cases olives, 9 cases plums	1,003	65	6 52	
15	....do	.....	....	" " Seward	7 bags coffee.....	924	37	3 42	
15	....do	.....	....	" " "	2 boxes p. a. sauce.....	65	65	42	
15	....do	.....	....	Lieutenant J. E. Porter, Fort Totten	1 box material	140	65	91	
15	....do	573	551	A. A. Surgeon W. E. Turner, Fort Pembina.....	5 bxs. medical supplies, 2 crates ranges, &c..	1,313	65	8 53	
15	....do	.....	....	United States Subsistence Department, Fort Pembina ...	12 bags coffee, 2 half bbls. sugar.....	1,846	37	6 83	
15	....do	.....	....	" " "	3 bxs. pepper, 1 box cranberries	155	55	85	
15	....do	.....	....	" " "	1 box prunes.....	60	55	33	
15	....do	.....	....	" " "	1 case mushrooms, 5 cases clams.....	.....	.....	.....	
15	....do	.....	....	" " "	2 cases and 1 box asparagus, 2 cases olive oil.	563	65	3 66	
15	....do	.....	....	" " "	1 sack cracked wheat.....	57	27	15	
	Amounts carried forward.....				.....			763 31	$4,626 57

				Amounts brought forward					$763, 31	$4, 626 57	
15	15	St. Paul	574	554	A. A. Q. M., Fort Ripley	1 bale, 1 box clothing	184	65	1 20		
Oct.	15	....do			United States Subsistence Department, Fort Ripley	17 bags coffee	2, 278	37	8 43		
	15	....do			" " "	3 boxes pepper, 2 boxes lard	256	55	1 41		
	15	....do			" " "	1 box cheese	60	65	39		
	15	....do	550	560	A. Q. M., Fort Lincoln	14 bales, 21 boxes, 32 bundles equipage	7, 377	65	47 95		
	16	....do	610	563	United States Subsistence Department, Fort Lincoln	100 barrels flour	21, 600	bbl. 44	44 00		
	17	....do	648		A. Q. M., Fort Stevenson	1 force-pump and handle, 1 box and castings	376	65	2 44		
	17	....do			" "	6 pieces iron pipe	159	37	59		
	17	....do	648		Captain French, 7th Cavalry, Fort Rice	3 kegs, 4 boxes shoes, 1 box h. nails	836	27	2 26		
	17	....do			" " "	12 boxes ordnance stores	2, 992	65	19 45		
	17	....do	648		Captain Thomson, 7th Cavalry, Fort Lincoln	3 " "	415	65	2 70		
	17	....do	648		Captain Britton, 6th Infantry, Fort Buford	3 " rifles, 13 boxes cartridges	2, 147	65	13 96		
	17	....do	648		A. A. Q. M., Camp Hancock	1 " drawers	148	65	96		
	17	....do	648		United States Subsistence Department, Fort Stevenson	2 " T. soap	66	55	36		
	17	....do			" " "	6 cas. olives, 3 cas. plums, 1 box mushr'ms, 2 b'x's asparagus.	722	65	4 69		
	17	....do			" " "	1 cracked wheat	43	27	12		
	17	....do	648		" Fort Lincoln	4 boxes T. soap, 1 box C. powder	147	55	81		
	17	....do			" "	12 " olives, 3 bxs. clams, 1 box mushr'ms, 5 bxs. aspa.					
	17	....do			" " "	4 " lemon extract, 8 bxs. Pa. cheese, 1 box olive oil.	1, 708	65	11 10		
	17	....do			" " "	2 sacks cracked wheat	205	27	55		
	16	....do	607		" Fort Seward	52 " flour	5, 148	22	11 33		
	16	....do	607		" Fort Totten	166 sacks flour	59, 400	22	130 68		
	17	....do	647	565	" "	4 boxes olives	84	65	55		
	20	....do	778	567	A. A. Q. M., Fort Ripley	1 box clothing	177	65	1 15		
	20	....do	778		United States Subsistence Department, Fort Ripley	1 tierce officers' stores	552	65	3 59		
	21	....do	789		" " "	140 sacks flour	13, 860	27	37 42		
	20	....do	779	570	A. A. Q. M., Fort Rice	4 boxes clothing	1, 174	65	7 63		
	20	....do	779		" "	1 roll zinc, 4 H. stores	979	65	6 36		
	20	....do			" "	1 box castings	240	27	65		
	21	White Bear	130	573	A. C. S., Fort Ripley	140 sacks flour	13, 860	19	26 33		
	26	St. Paul	930	578	A. A. Q. M., Fort Pembina	1 box lead bucket, 1 box clothing	26	65	17		
	26	....do		590	Colonel L. C. Hunt, Fort Totten	1 " lariats	158	65	1 03		
	26	....do	963		United States Subsistence Department, Fort Totten	12 tubs butter	775	65	4 91		
	26	....do	930	592	" " Fort Pembina	18 " "	1, 146	65	7 45		
	26	....do	964	596	A. A. Q. M., Fort Lincoln	30 doors	810	55	4 46		
	26	....do	964		" Camp Hancock	1 box stationery	22	65	17		
	26	....do	964	599	" "	1 " tent flies	130	65	85		
	26	....do	964	601	" Fort Totten	10 boxes clothing	2, 402	65	15 61		
	26	....do	963	587	A. Q. M., Fort Lincoln	8 sacks plastering hair, 1 case and can oil	552	65	3 59		
	26	....do			" "	3 boxes hardware	225	55	1 24		
	26	....do			" "	1 keg white lead, 1 box ochre, 4 barrels plaster Paris.					
	26	....do			" "	2 boxes cement, 22 kegs nails, one half keg nails	4, 200	27	11 34		
	28	....do	1, 022	603	A. A. Q. M., Fort Ripley	1 box axes	105	37	38		
	28	....do			" "	1 " shovels	155	55	85		
					Amounts carried forward				1, 204 43	4, 626 57	

EXHIBIT B—Continued.

Date.	From.—	No. W. B.	No. B. L.	Consignee and destination.	Description of articles.	Weight.	Rate.	Amount.	Total.
				Amounts brought forward				1,204 43	$4,626 57
16 Oct'r 28	St. Paul...	1037	605	Captain Hart, 7th Cavalry, Fort Rice	6 kegs, 4 bxs. horseshoes	1,441	27	3 89	
28	....do.....	.....	....	" " "	1 box H. nails, 2 bxs. accoutrements, 1 bdl. leather.	928	65	6 03	
29	....do.....	1037	....	Captain Thompson, 7th Cavalry, Fort Lincoln	1 box leather	143	55	79	
31	....do.....	.....	....	" Benteen, " " Rice	1 box H. S. nails	88	37	33	
29	....do.....	1075	606	Lieutenant Porter, " " Totten	1 bdl. leather	101	55	56	
29	....do.....	1075	....	A. A. Q. M., Fort Totten	2 bxs. drugs, 1 case alcohol, 1 box lanterns	154	65	1 00	
29	....do.....	.....	605	" "	1 box C. S. soap, 1 box flax-seed meal	50	55	28	
29	....do.....	.....	609	United States Subsistence Department, Fort Totten	3 bbls. lard-oil	1,200	37	4 44	
29	....do.....	1076	618	A. A. Q. M., Fort Pembina	6 stoves, 1 box castings, 3 bxs. clothing	1,840	65	11 96	
30	White Bear,	209	612	United States Subsistence Department, Fort Lincoln	200 sacks flour	19,800	bl. 36	36 00	
30	St. Paul..	1098	623	A. A. Q. M., Fort Ripley	2 crates stovepipe, 1 bbl. elbows	532	98	5 21	
30	....do.....	1134	625	Captain Yates, 7th Cavalry, Fort Lincoln	1 tierce mess kit	380	65	2 47	
30	....do.....	1134	628	United States Subsistence Department, Fort Lincoln	1 box com. property	176	65	1 14	
31	....do.....	1177	621	A. A. Q. M., Fort Totten	3 bxs. clothing	142	65	92	
31	....do.....	1177	630	United States Subsistence Department, Fort Totten	1 box subsistence stores	205	65	1 33	
31	....do.....	1177	636	Captain Dandy, A. Q. M., Fort Lincoln	1 bbl. castings	90	27	24	
									1,281 02
Nov'br 2	St. Paul..	38	639	A. A. Q. M., Fort Lincoln	250 pkgs. iron-bunks	13,250	65	86 13	
2	....do.....	.....	....	A. C. S., "	8 sacks buckwheat flour	816	55	4 49	
2	....do.....	.....	....	" Fort Rice	1 sack "	82	55	45	
4	....do.....	76	645	" " Lincoln	12 pkgs. subsistence supplies	1,643	65	10 68	
5	....do.....	115	642	Lieutenant Harlan, 7th Cavalry, Fort Lincoln	1 box lathe	500	65	3 25	
5	....do.....	148	651	A. A. Q. M., Fort Ripley	4 bxs. glass	240	37	89	
9	....do.....	235	653	Post Q. M., " Rice	1 box stove furniture, 1 grate castings	526	65	3 42	
9	....do.....	.....	....	A. A. Q. M., " Lincoln	18 kegs nails	1,908	27	5 15	
9	....do.....	.....	....	United States Subsistence Department, Fort Lincoln	10 bbls. apples	1,500	37	5 55	
9	....do.....	.....	....	A. A. Q. M., Fort Rice	3 bxs. clothing	286	65	1 86	
9	....do.....	.....	....	Lieutenant Custar, 7th Cavalry, Fort Lincoln	7 kegs, 3 bxs. horseshoes	1,214	27	3 28	
9	....do.....	.....	....	" " " "	4 bxs. ordnance stores, 1 bdl. leather	1,295	65	8 42	
9	....do.....	.....	....	" " " "	1 box " "	70	65	46	
9	....do.....	234	655	Lieutenant Porter " Fort Totten	1 box camp kettles	67	65	44	
9	....do.....	234	....	A. A. Q. M., Fort Totten	4 bdls. sash, 6 doors	498	65	4 40	
9	....do.....	235	657	A. Q. M., Fort Lincoln		210	55		
10	....do.....	296	661	A. A. Q. M., Fort Totten	2 bxs. toe-calks, 5 bdls. iron rods	650	37	2 41	
10	....do.....	.....	....	" "	1 roll zinc, 1 box H. buckles	95	65	62	
10	....do.....	.....	....	" "	8 bbls. coal	2,160	27	5 83	
10	....do.....	.....	....	" "	4 bdls. iron H. S	226	37	84	
10	....do.....	274	663	" Fort Lincoln	262 pkgs. iron bunks, 1 pkg. bunk slats	13,924	65	90 51	
10	....do.....	275	665	A. Q. M., "	1 box books	65	65	43	

	10	....do	296	667	A. C. S., Fort Totten	2 pkgs. subsistence supplies	132	65	86		
	10	....do	.....	....	" "	2 crocks butter	120	1 30	1 56		
	12	....do	373	675	A. Q. M., Fort Lincoln	7 stoves, 1 crate stove-drums	1,128	65	7 33		
	12	....do	.....	....	" "	1 crate stove-pipe	250	98	2 45		
					Amounts carried forward		.....	.....	251 71	$5,907 59	
					Amounts brought forward		.....	.....	$251 71	$5,907 59	
17 Nov'br	13	St. Paul ..	434	672	A. A. Q. M., Fort Ripley	1 box F. shirts, 1 box clothing	163	65	1 06		
	13	....do	438	677	Post Q. M., Fort Rice	1 bale muslin and flannel, 2 bxs. drugs	.....	.....	.....		
	13	....do	.....	....	" "	1 can alcohol, 1 can aquem, 1 can olive-oil	312	65	2 03		
	13	....do	.....	....	" "	1 box castile soap, 1 box ground flax-seed	145	55	80		
	13	....do	.....	....	" "	1 can lard oil	20	65	13		
	13	....do	439	....	United States Subsistence Department, Fort Lincoln	2 bbls. oat-meal, 2 bbls. B. W. flour	872	27	2 35		
	13	....do	439	....	A. A. Q. M., Fort Lincoln	1 bale flies, 4 bxs. kettles, tents, poles, &c	1,130	65	7 35		
	13	....do	439	....	United States Subsistence Department, Fort Rice	½ bbl. B. W. flour	110	27	30		
	28	....do	799	692	A. A. Q. M., Fort Ripley	1 box books	64	65	42		
	30	....do	820	695	Post Q. M., Fort Seward	8 mules, 2 horses, 2 bxs. harness, &c	20,000	.....	45 00		
										311 15	
					Total		.....	.....	.....	$6,218 74	

18 EXHIBIT C.

Not transferable.

Quartermaster's Department, U. S. Army. Request for transportation. Not valid until countersigned by the officer issuing.

H. No. 39,763. FORT A. LINCOLN, D. T., *Sept. 30th*, 1874.

The L. S. & M. R. R. will please transport Capt. F. W. Benteen and three other comm'd' officers and 125 enlisted men, Co's H and K, 7th Regiment Cavalry, from N. P. Junction to St. Paul, Minn., en route from Fort A. Lincoln to St. Paul.

M. C. MEIGS,
Q. M. General, Bvt. Maj. Gen. U. S. A.
G. B. DANDY,
Asst. Q. M., U. S. A.

The holder of this request, or the officer in charge of troops, is required to fill the receipt below before signing, stating the exact number of men transported, and the places from and to which transportation has been furnished. The receipt should be filled up in ink if practicable, and if the person receipting cannot write his name, there should be a witness to his mark. Names and places should be written in full, and if the transportation is furnished by other than passenger train or passenger car, the fact should be stated.

SHREVEPORT, LA., *Nov. 10th*, 1874.

I certify, on honor, that L. S. & M. R. R. has furnished transportation for four officers and one hundred and twenty-five men, from N. P. Junction to St. Paul, in compliance with the above request.

LOUIS MERRILL,
Maj. 7th Cav., Com'd'g.

FORT A. LINCOLN, D. T.,
Sept. 30th, 1874.

I certify that this request is made upon the authority of telegraphic instructions of Brig. Gen. A. H. Terry, com'd'g dept., dated St. Paul, Sept. 30th, 1864, and on account of change of stations.

G. B. DANDY,
Asst. Quartermaster, U. S. A.

19 EXHIBIT D.

[Form No. 17.]

Original U. S. bill of lading.

Received, N. P. Junction, Nov. 13th, 1874, from 1st Lieutenant Jas. Humbert, 17th Inf., A. A. Quartermaster, United States Army, the following articles and packages of public property specified below, (contents and value unknown,) in apparent good order and condition, to be forwarded by L. S. & M. R. R. and connecting lines, from N. P. Junction, Minn., to Saint Paul, Minn., en route from Bismarck, D. T., to St. Paul, Minn., there to be delivered in like good order and condition, unto Capt. G. W. Bradley, Asst. Quartermaster United States Army.

Freight to be paid on the original bill of lading to L. S. & M. R. R. by the disbursing quartermaster U. S. A., at St. Paul, Minn., and at the rates hereinafter stated.

(Signed in duplicate.)

GEO. SHERRIFF,
Agt. for L. S. & M. R. R. Co.

Via L. S. & M. R. R.	Marks.	No.	Packages, &c.	Contents.	Weight, lbs.	R'te & class.
	Capt. W. A. Marye, ord. officer, Rock Island Arsenal, Ill....	4	Boxes	Ord. stores	1,052	Special.
		3	"	do.	682	
		3	"	do.	780	
		4	"	do.	769	
	Comdg. officer, Rock Island Arsenal, Ills	3	Boxes	Ord. stores	783	
	Ordnance officer, Rock Island Arsenal, Ills	2	Boxes	Ord. stores	490	

Received, St. Paul, Minn., Nov. 24th, 1874, from L. S. & M. R. R., the public property specified within, in good order and condition, weight four thousand five hundred and fifty-six (4,556) pounds.

G. W. BRADLEY,
Capt. and A. Q. M., U. S. A.

Bill of lading for United States property—rail. Forwarded from N P. Junction to Saint Paul, Minn., Nov. 13th, 1874.

20 EXHIBIT E.

LAKE SUPERIOR AND MISSISSIPPI RAILROAD COMPANY,
St. Paul, Minn., December 3d, 1874.

Know all men by these presents, that the Lake Superior and Mississippi Railroad Company, a corporation existing in the State of Minnesota, does by these presents constitute and appoint James Smith, jr., an attorney and counsellor at law of the Supreme Court of the United States, resident of St. Paul, in said State, the attorney of said corporation, in its name and behalf or otherwise, to prosecute, in the Court of Claims of the United States, the claims and demands of said corporation against the United States, for and on account of the transportation by said corporation, over its line of railroad, of troops and property of the United States, including all claims, demands, or causes of action of said corporation against the United States, with full power to receive the amount due, or that may be adjudged due or payable to said corporation for or on account of any such liability, and to make, execute, and deliver all proper or necessary receipts, releases, or acquittances in the premises. Hereby agreeing to ratify all lawful acts done or to be done by said attorney in the premises.

In testimony whereof the said corporation has caused these presents to be sealed with its corporate seal, and attested by its secretary, this 3d day of December, A. D. 1874.

[CORPORATE SEAL.] THOS. M. DAVIS, *Secretary.*

21 In the Court of Claims of the United States.

THE LAKE SUPERIOR & MISS. R. R. CO.
vs.
THE UNITED STATES. } No. 10293.

And the said defendants, by their attorney-general, say that the petition in this cause does not allege facts sufficient to constitute a cause of action.

JOHN GOFORTH,
Assistant Attorney-General.

Filed February 25, 1875.

22 In the Court of Claims of the United States, Dec. term, 1874.

THE LAKE SUPERIOR AND MISSISSIPPI RAILroad Company
vs.
THE UNITED STATES. } No. 10293.

And the said plaintiff comes and says that the said petition, and the matters therein contained in manner and form as the same are above stated and set forth, are sufficient in law for the said plaintiff to have and maintain its aforesaid action thereof against the said defendants, and the said *plaintiff* is read, to verify and prove the same as the court here shall direct and award.

Wherefore the said plaintiff prays judgment, and its damages to be assessed, as in said petition demanded.

JAMES SMITH, JR.,
Atty. for Plaintiff.

23 In the Court of Claims.

THE LAKE SUPERIOR AND MISSISSIPPI RAILroad Company
vs.
THE UNITED STATES. } 10293.

At a Court of Claims held at the Capitol in the city of Washington, the 31st day of May, A. D. 1875, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said petition be dismissed.

By the court.

A true copy of record.

24 United States Court of Claims, Dec. term, 1874.

THE LAKE SUPERIOR AND MISSISSIPPI RAILroad Co.
vs.
THE UNITED STATES. } No. 10293.

Now comes into court James Smith, jr., attorney for the claimant, and

moves for the allowance of an appeal in this case to the Supreme Court of the United States.

Filed June 10, 1875.

JAMES SMITH, JR.,
Atty. for Claimant.

AT CHAMBERS.

Allowed.

C. D. DRAKE,
Chief-Justice.

25 In the United States Court of Claims, Dec. term, 1874.

THE LAKE SUPERIOR AND MISSISSIPPI RAILroad Company
vs.
THE UNITED STATES. } No. 10293.

The court was informed by counsel, on the argument, that the pleadings had been framed with the intent of presenting the exact questions likely to arise upon the evidence, and that the purpose of both parties in submitting the case on demurrer, was to obviate the expense and delay incident to taking testimony or otherwise proving a case.

The judges before whom the case was argued believe that that purpose will be best effected by this court directing a final judgment to be entered dismissing the petition, without expressing any opinion as to the law of the case.

By the court.

Filed May 31, 1875.

26 In the Court of Claims.

THE LAKE SUPERIOR AND MISSISSIPPI RAILroad Company
vs.
THE UNITED STATES. } No. 10293.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the claimant for the allowance of an appeal, as filed in the clerk's office June 10, 1875, and of the order of the chief-justice at chambers, allowing the same, and of the statement by the court at the time of the decision.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 28th day *day* of June, 1875.

[SEAL.] ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

(Indorsement on cover:) No. 487. The Lake Superior and Mississippi Railroad Company, appellants, vs. The United States. Court of Claims. Filed 18th October, 1875.

C

IN THE

Supreme Court, United States.

DECEMBER TERM, 1876.

The Lake Superior and Mississippi R. R. Co.
vs.
The United States.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

SMITH & REDINGTON,
JAMES SMITH, JR.,
Atorneys for Appellant.

WASHINGTON:
R. O. POLKINHORN, PRINTER.
1876.

In the Supreme Court, United States.

DECEMBER TERM, 1876.

The Lake Superior and Mississippi Railroad Company
vs.
THE UNITED STATES.

Appeal from the Court of Claims.

The plaintiff brought suit in the Court of Claims. The defendant demurred to the petition. The court, without passing upon the legal question involved, rendered judgment *pro forma* upon the demurrer in favor of the defendant and dismissed the petition.

From this judgment an appeal has been taken to this court.

The plaintiff's petition alleged that the plaintiff was a railroad corporation in the State of Minnesota, duly incorporated under the acts of the Territory and State of Minnesota, with full power to construct, maintain and operate a line of railroad from St. Paul to Lake Superior in said State, and to charge and receive tolls and compensation therefor as a common carrier of persons and property; that she had constructed and operated such line of railroad, and had, at her own cost and charges, purchased all the rolling stock, &c., necessary to carry on the business of a common carrier; that Congress, by the act of May 5th, 1864, made a grant of lands to said

State to aid in the construction of said line of railroad, and that the State duly conferred upon the plaintiff such grant, and that she is entitled to the same; and that the plaintiff, at the time of performing the services hereinafter mentioned, was the lessee of the Stillwater and St. Paul Railroad Company, extending from the St. Croix River and Lake, at Stillwater, Minnesota, to a junction with the line above mentioned at White Bear Lake, thereby forming a connected line of railroad from Lake Superior and St. Paul to Stillwater; that the plaintiff operated said last named railroad with her rolling stock, and that a portion of the services set out in the petition was performed on the same.

The petition further alleged that the plaintiff had been at all times willing to allow the United States to pass the engines, cars and rolling stock of the United States over said line of railroad, free from all toll or charge therefor, while engaged in the transportation of any troops or property of the United States: but the agents and officers of the United States had refused so to do, and instead thereof had made requisitions upon the plaintiff for the transportation of troops and property; that plaintiff, upon such requisitions, had, at her own expense, and with her own rolling stock and employees, between the 30th of June and the 1st, of December, 1874, transported for the defendant, over said road, five hundred and ninety persons, the usual and reasonable compensation therefor being $3,380, and military supplies, subsistence, equipage and property of the United States, amounting, in the aggregate, at the usual and reasonable compensation for such transportation, to the sum of $6,218.74, for which several sums she asked for judgment against the defendant.

The Court of Claims gave judgment for the defendant, expressly declaring, however, that it did so without deciding the legal question involved.

That question is this: Was the plaintiff, by reason of being a land grant railroad, bound to transport the troops and property of the United States free of charge, or had she a right to a reasonable compensation for such services?

We maintain that she should be paid a reasonable compensation, therefor, and shall endeavor to make this appear.

The act of May 5th, 1864 (13 Stat., 64), made a grant of land in the usual form to the State of Minnesota to aid in the construction of plaintiff's road. The act contained the following provisions: "And the said rail-"road shall be and remain a public highway for the use "of the Government of the United States, free from all "toll or other charge for" ~~[upon]~~ "transportation of "any property or troops of the United States." Sec. 5, p. 65.

"That the United States mail shall be transported over "said road, under the direction of the Post Office De-"partment, at such price as Congress may, by law, di-"rect; *provided*, that, until such price is fixed by law, "the Postmaster General shall have the power to deter-"mine the same."

By the act of Congress of June 16th, 1874 (18 Stat., 74), making appropriations for the army, for the fiscal year ending June 30th, 1875, it was provided, "that no "part of the money appropriated by this act shall be "paid to any railroad company for the transportation of "any property or troops of the United States, over any "railroad which, in whole or in part, was constructed by "the aid of a grant of public land, on the condition that "such railroad should be a public highway for the use "of the Government of the United States, free from "toll or other charge, or upon any other conditions for "the use of such road for such transportation; nor shall

" any allowance be made out of any money appropriated " by this act for the transportation of officers of the ar- " my over any such road when on duty and under orders " as a military officer of the United States. But nothing " herein contained shall be construed as preventing any " such railroad from bringing a suit in the Court of " Claims for the charges for such transportation, and re- " covering for the same, if found entitled thereto by vir- " tue of the laws in force prior to the passage of this " act."

The manifest intent of this act was to allow the railroads to bring their action in the Court of Claims, and to authorize a recovery in their favor, provided the court should be of opinion that, under the laws in force, excluding the act of June 16th, 1874, they were entitled to compensation.

The case turns upon the construction that should be given to the clause in the Act of 1864, which declares that, " the said railroad shall be and remain a public " highway for the use of the Government of the United " States, free from all toll or other charge for [upon] the " transportation of any property or troops of the " United States."

This is a legislative declaration of three things. 1. That *the railroad* shall be a public highway. 2, That the United States shall have the right to use the same for the transportion of its troops and property. 3, That the United States, in the transportation of its troops and property over such railroad as a public highway, shall not be required to pay toll, or other charge.

What, then, is a " railroad," and what is a " public highway " and what is " toll " ? There ought to be no difference of opinion on this subject.

A railroad is defined by Webster to be " a road or

" way on which iron rails are laid for wheels to run on, " for the conveyance of heavy loads in vehicles."

It is the road-bed, track and fixtures that constitute *the railroad*, and not the locomotives, cars and operatives of the road. They are appurtenances, necessary for its profitable use but they are not the railroad. In common parlance, a company owning the road-bed and track, is understood to own the railroad, although it may not own a single car, and although it may be operated by another company. And under the legislation of many of the States and the decisions of our courts, such a company is responsible to the public. Admitting, for the sake of the argument, that the word " railroad " may sometimes signify the track and rolling stock, yet the connection in which it is used in this statute shows that it was not intended to have that sense. The railroad is declared to be a public highway. Cars and locomotives are no more a part of a highway than boats are a part of a canal, or vehicles are a part of a turnpike. Conductors, engineers, brakemen, switch-tenders and the various other necessary employees are no part of a railroad when it is regarded simply as a public highway, and Congress, when it declared that " the railroad shall be and remain a public highway," must have meant that the road-bed, track, fixtures, and what is generally regarded as the realty of a railroad, should be the public highway. This will appear from a careful examination of other portions of the statute under consideration. The 1st section declares that there is hereby granted " for the purpose " of aiding in the construction of a railroad," so many sections " on each side of the said railroad on the line thereof," and, " in case it shall appear " * * * " when the line of said road is definitely fixed," &c. And in the 2nd section it is enacted " That whenever " said State shall cause to be completed twenty consecu- " tive miles of any portion of *said railroad*, supplied with

" all the necessary draws, culverts, viaducts, crossings, sid-
" ings, bridges, turnouts, watering places, depots, equip-
" ments, *furniture*, and all other appurtenances of a first
" class railroad, patents shall issue " &c. If the law makers had supposed that the word railroad included equipments and furniture, they would not have been so careful to insert the clause " supplied with all the necessary draws," &c. The 3d section provides that, when " the road shall be definitely located, and a plat thereof filed with the Secretary of the Interior," the lands shall not be subject to settlement.

The 4th section authorizes the State " to locate the said road over any public lands of the United States not otherwise appropriated."

Then comes the 5th section, now under consideration.

The 6th section provides " that if said road is not completed within eight years," no further patents shall issue.

The 7th section provides " that the United States Mail shall be transported *over said road*," &c.

The 8th section provides " that any railroad which may hereafter be constructed from any point on the Bay of Superior, in the State of Wisconsin, shall be permitted to connect with the said railroad," &c.

Thus it is seen that every section in this entire statute uses the word railroad in the sense of the road-bed and track, and not in the sense of road-bed, track, rolling stock, and " other appurtenances," necessary to run the road, and transport persons and property.

This view is strengthened by the fact that in the early history of railroads and at the time of this declaration that a railroad should be a public highway was first introduced into our legislation, railroads were regarded in this country and in England as iron turnpike roads on which the

public had the right to draw by steam power their own vehicles, upon the payment of a reasonable sum as toll, for the use of the track.

In Massachusetts toll-gates were actually erected along the line of railroads first constructed in that State.

At the present day the practice of using railroads by the public has fallen into disuse, although many of the special English acts, and many of the charters in this country still fix the maximum of *toll* that can be charged, as well as that of *freight* and *fare*.

Redf. Railways, 356.

Webster defines a highway to be "a road or way "open to all persons who choose to pass on it."

Bouvier defines it to be "a passage road or street "which every citizen has a right to use."

Bouvier defines toll to be "a sum of money for the "use of something, generally applied to the considera- "tion which is paid for the use of a road, bridge, or the "like of a public nature."

There are a great many cases relating to turnpikes and canals, which use the term toll in the sense above defined.

There are also cases relating to railroads which use the word in the same sense.

In Simpson v. Denison, 13 Law and Equity, 359, the vice-Chancellor said: "Tolls are defined to be dues 're- "ceivable for the liberty of passing over highways, "public or private.' They are payments connected with "the passing over." * * * "If I were compelled "to give my opinion it would be that tolls should be "fixed with reference to the number of carriages pass- "ing over the railway, the payment being in considera- "tion of their passing over both under the act of parlia- "ment and, from the nature of tolls, being a payment "made in reference to their passing over."

In South Yorkshire Railway Co. vs. Great Northern Railway Co., 22 Eng. Law and Eq., 536, the definition of the word tolls, as given in Simpson vs. Dennison (*supra*), was approved.

In Boyle vs. Philadelphia and Reading R. R. Co., 54 Penn. State, 310, the case presented the single question whether the railroad under its charter had the right to charge for the transportation in its own cars of property and persons, more than four cents per ton per mile for property, and two cents per mile for each person. The charter provided that *the toll* on any property transported should not exceed four cents per ton per mile, and on each person two cents.

The court held that the limitation as to tolls applied to the use of the railroad by other persons or companies, for transporting persons or property, and did not apply to the transporting of persons or property by the railroad company with its own cars and rolling stock. STRONG, Judge (now a member of this Honorable Court), in delivering the opinion at *nisi prius*, which opinion was in terms adopted by the whole Supreme Court, said:

"The company was incorporated under an 'Act of "Assembly' passed on the 4th of April, 1833. It was "one of the earliest of corporations of the kind created "in this commonwealth."

After referring to several sections of the act, he said: "That it was contemplated others beside the company "might use the road after its completion and might "transport upon it their own property as well as passen- "gers, might put cars and carriages upon the road, is "beyond question. If not the entire 20th section of "the original act, the act of 1833, is unmeaning and ab- "surd. The road was to be a public highway, as truly "such as is a canal or turnpike road, though it was "placed under the care, management and regulation of

"its owners. * * * * * * The legislature must "be considered as having used words in the ordinary "signification, and especially so when their technical "sense and their ordinary signification are the same. "The legal meaning of the word 'toll' is, and always "has been well defined. It is 'a tribute or custom paid "for passage,' not for carriage—always something taken "for a liberty or privilege, not for a service; and such "is the common understanding of the word. Nobody "supposes that tolls taken by a turnpike or canal "company include charges for transportation, or that "they are anything more than an excise demanded "and paid for the privilege of using the way. As al- "ready said, the Philadelphia & Reading Railroad Com- "pany was one of the earliest companies chartered in "this State. Before 1833, transportation had been gen- "erally over common roads, turnpikes and canals. The "common and the legislative mind were then familiar "with what was called tolls. They understood by them "sums paid for liberty of passage, without more, and "this whether due to a turnpike, a canal, or a bridge "company. Certainly it was never supposed that tolls "were a compensation for the use of carriages, for motive "power, for superintendence in transit and for service "rendered in transporting, in addition to the liberty of "using the way."

These authorities justify us in claiming that the word toll, as used in this statute, should receive its common and ordinary signification. The additional words "or other charge" in our opinion, were not intended to enlarge the meaning of the proviso, but they were used for the purpose of preventing the railroad from asserting any claim *similar* to toll, for the privilege of passage over the highway, and the clause should be construed as though it read "free from all toll or like charge," upon the well known maxim, *noscitur a sociis.*

Congress, then, having used the words which we have been considering, must be presumed to have employed them in the sense in which they are ordinarily understood, unless there is something in the act, or in other acts *in pari materia*, to indicate that they were intended to have a different signification.

There is nothing in the act to show that they were used in any other than the ordinary sense; but, on the contrary, there is much to show not only that those words were used in their ordinary signification, but also that there was no intention of imposing upon the company the duty of transporting at its own cost. The 6th Section provides "that the United States mails shall be "transported over the said road under the direction of "the Post Office Department, at such price as Congress "may by law direct, &c." And the 8th Section provides, that any railroad authorized to connect with plaintiff's road, as therein provided, "shall have the right and "privilege to transport, or have transported, over the "track of said railroad, for the construction of which "the said lands are hereby granted, all or any of its cars, "passengers or freights, and the said railroad controlling "the said road, for the construction of which the said "lands are hereby granted, shall have the same right "and privilege to transport, or have transported, all or "any of its cars, freights or passengers over the track "of the said railroad of the company so permitted to con-"nect, and said transportation shall be paid by the rail-"road company using to the railroad company accord-"ing the same, at the usual rates or charges which may "be imposed by the said company upon all other cars, "freights or passengers."

Here are express provisions for transportation and for payment, and they show that Congress knew how to use apt words when it intended that the duty of transporta-

tion should be imposed upon the railroad. They are found in the statute, making the grant to the plaintiff.

Is it not reasonable to suppose that Congress would have been equally clear if it had intended to impose upon the plaintiff the duty of transporting, at its own expense, the troops and property of the United States?"

The acts *in pari materia* do throw much light upon the construction that should be given the clause in question. That such acts may be looked to, and should be construed as one act, is abundantly settled.

Patterson v. Winn, 11 Wheat., 385.
The Harriet, 1 Story, 251.
Dubois v. McLean, 4 McLean, 489.
U. S. v. Collier, 3 Black. C. C., 325.
Black v. Scott, 2 Brock., 325.

As early as May 26, 1824, Congress authorized the State of Indiana to connect the Wabash with the Miami of Lake Erie, and then for the first time introduced the provision relating to tolls, and in the following words:

"*And provided further*, that the said canal when com-
" pleted shall be and forever remain a public highway
" for the use of the Government of the United States
" *free from any toll or charge whatever* for any property of
" the United States, or persons in their service in public
" business, passing through the same." 4 Stat., 47.

This act did not make any grant of land to aid in the construction of the canal. It gave to the State the right of way and use of ninety feet on each side of the canal for canal purposes, and for no other.

It is very clear that Congress did not expect this canal company to transport at its own expense "any property " of the United States or persons in their service." It did prohibit the company from taking toll or other charge for allowing the government to transport its own property or those in its service. This must, and we

presume will be, conceded by all parties. There was no adequate equivalent given by the United States for the burden that would have been imposed upon the canal company if it had been required to transport, without compensation, the property of the United States.

We desire the court to give special attention to this act, because it is the starting point in the legislation now under consideration.

The next act upon this subject was passed March 2d, 1827. It made a grant of lands, equal to one-half of five sections in width on each side of the canal, to the State of Illinois to aid "in opening a canal to unite the waters "of the Illinois River with those of Lake Michigan." It contained the identical proviso found in the last named act of 1824. 4 Stat., 234.

The next act was passed on the same day as the one last cited (March 2d, 1827), and made a grant of land to the State of Indiana to aid in the construction of the canal authorized by the act of May 26th, 1824, and contained the same proviso. 4 Stat., 236.

By the act of March 3d, 1827, Congress made a grant to the State of Ohio for the purpose of aiding the Columbus and Sandusky Turnpike Company in making a road from Columbus to Sandusky City of "the one-half "of a quantity of land equal to two sections on the wes-"tern side of said road," and provided "that no toll "shall at any time be collected of any mail stage nor of "any troops or property of the United States."

This was a land grant to a private company, and it must be conceded that there was no duty imposed upon it of transporting, at its own expense, either the mails or troops or property of the United States.

By the act of May 23d, 1828, Congress donated certain lands to the State of Alabama to aid in the improve-

ment of certain rivers, with the proviso "that the said "rivers, when improved as aforesaid, shall remain for- "ever free from toll for all property belonging to the "Government of the United States, and for all persons "in their service, and for all citizens of the United "States, unless a toll shall be allowed by act of Con- "gress." 4 Stat., 290.

This act went a step in advance of all that had preceded it, and provided that no toll should be imposed upon *any citizen of the United States.* Most manifestly it was never imagined by any one that every citizen of the United States could be transported over those rivers without charge.

The act of May 24th, 1828, makes a grant of lands to the State of Ohio to aid in the construction of the Miami and other canals, and contains the identical proviso before quoted. 4 Stat., 305.

The act of March 2d, 1831, gives to the Territory of Florida, or such company as shall be organized by it, the use of the public lands for ninety feet on each side of the St. Andrew's Bay Canal, and the canal from Matanzas to Halifax River for canal purposes. It contains the usual proviso in the usual form. It makes no land grant. 4 Stat., 474.

All of these acts use the term toll in a sense which cannot be misunderstood. They fix its meaning by a user, with the same signification, during a period of many years.

But it will be said that the legislation above referred to related to canals and turnpike companies, and even admitting that the word toll, when applied to them, signified a charge only and not a service, yet it does not follow that it should have the same meaning when applied to a railroad company.

Congress has answered this argument for us.

By the act of March 2d, 1833, which amended the act of March 2d, 1827, granting lands to the State of Illinois to aid in the construction of a canal to connect the Illinois River with Lake Michigan, and before quoted by us (4 Stat., 234), it was provided, "that the lands granted "to the State of Illinois, by the act to which this is an "amendment, may be used and disposed of by said State, "*for the purpose of making a railroad instead of a canal as* "*in said act contemplated;* * * * * * * * *Pro-* "*vided. that if a railroad is made in place of a canal, the* "*State of Illinois shall be subject to the same duties and obli-* "*gations, and the Government of the United States shall be* "*entitled to and have the same privileges on said railroad which* "*they would have had through the canal if it had been opened.*"

What can be more explicit? The State was authorized to construct a canal, and in aid of its construction a grant of land was made. It was subjected to the obligation of allowing the government to pass its property and troops over it in the boats of the government, and was prohibited from making any charge for this privilege. But, by an amended act, Congress granted to the State the privilege of making a railroad instead of a canal, and provided that, if a railroad should be built instead of a canal, "the United States shall be entitled to and have "the *same* privileges on said railroad which they would "have had through the canal if it had been opened."

The court will observe that the privileges are to be the *same* and not *other* and greater. If the canal had been built, the Government could not have required it to transport property and troops, without compensation; but it could have used the canal as a highway, and run its own vessels over it without charge or toll. So, if the railroad was built, the Government could not require it to transport property and troops without compensation, because

that would be greatly to extend the obligation of the company, when the statute provided that its obligation should be the same; but it could use the road-bed as a public highway, and with its own rolling stock and employees transport troops and property.

Here, then, is a statutory construction of the proviso, and its subsequent use in a statute must be subject to the well settled rule of construction that, "Where language has once been incorporated in a stat- "ute and received a construction, that construction ob- "tains in subsequent statutes when the same language "is used."

It is not to be presumed that Congress, when it substitutes the provisions of one tariff act for another, intends to use terms in a sense different from that in which they were used in the prior act.

Rosevelt v. Maxwell, 3 Blatch. C. C., 391.

A section of one statute not very reasonable, as read in the section itself, may be read by the light of a section in an earlier statute on the same general subject, and the effect of the former largely extended thereby.

Kennedy v. Gibson, 8 Wall., 506.

Laws imposing duties are not construed beyond the natural import of the language, and duties are never imposed upon citizens upon doubtful interpretations.

Adams v. Bancroft, 3 Sum., 384.

United States v. Wiggleworth, 2 Story, 369.

This proviso, from the time of its first use in the statutes above quoted, until after the grant to the plaintiff of May 5, 1864, became the settled formula that was introduced into every statute, making a land grant in aid of the construction of a railroad, with the single exception of the Union Pacific Act, and in that the company was given a reasonable compensation for transporting

troops and property, to be applied on the interest due the Government. 12 Stat. 493, Sec. 6.

It was incorporated in the grant of September 20, 1850 to the Illinois Central, Mobile and Chicago and Mobile and Ohio roads. 9 Stat. 466. And in the grant of May 15, 1856, to the State of Iowa, for the four great roads that run east and west across that State. 11 Stat. 9. And in the grant of May 17, 1856, to the States of Florida and Alabama. 11 Stat. 15, 17. And in the grant of June 30, 1856, to the States of Wisconsin and Michigan. 11 Stat. 20, 21. And in the grant of August 11, 1856, to the Vicksburg and Meridian and the Gulf and Ship Island Companies. 11 Stat. 30.

And in the grant of March 3, 1857, to the Territory of Minnesota for its roads. 11 Stat., 195. And in the grant of March 3, 1863, to the State of Kansas for its roads. 12 Stat., 772. And in the grant of May 5, 1864, to the plaintiff, the Lake Superior & Mississippi Railroad. 13 Stat., 64.

This is the statute now under consideration. After the passage of this act the same proviso was incorporated into every act prior to July 4, 1866.

See the grant of May 12, 1864, to the McGregor and Missouri River, and the Sioux City and St. Paul roads. 13 Stat., 72. And to Minnesota, of May 12, 1864. 13 Stat., 74. And to the same State, of March 3, 1865, for the Winona and St. Peter and the Minnesota Valley roads. 13 Stat., 526.

There was no change made in the language of this proviso until after the late war was ended, and until after both political parties began to resolve against the policy of making land grants to aid in the construction of railroads. And when it was made it was made in language that could not be misunderstood.

The first change was in the act of July 4, 1866, making a grant to the States of Missouri and Arkansas for the Iron Mountain Railroad. The language was—"That "the said railroads shall be and remain public highways, "so far as the same may be constructed under this act, "for the use of the Government of the United States, "free of all toll or other charges upon the transporta- "tion of any property or troops of the United States, "and *at the costs in all respects of said railroad companies.*"

14 Stat., 83.

Now if the railroads were bound to transport at their own cost under the proviso as it had before been used, why this change in the language? Congress will not be supposed to have done a vain thing. It must have considered that the old formula was insufficent or it would not have adopted a new one.

The next time it applied the new rule was in the grant to the state of Minnesota of July 4, 1866. 14 Stat., 87.

In this act it was still more explicit, if possible, than in the last named. It provided that "the said railroads "shall be and remain public highways for the use of the "Government of the United States, free of all toll or "other charges upon the transportation of any property "or troops of the United States, and the same shall *at* "*all times be transported at the cost, charge and expense, in* "*all respects, of the company or corporation, or their suc-* "*cessors, or assignees, having or receiving the benefit of the* "*land grants herein made.*"

See, also the acts of July 13, 1866—14 Stat., 94; July 25, 1866—14 Stat., 236; July 26, 1866—14 Stat., 289, and July 28, 1866—14 Stat., 338, where substantially the same language is used.

This change in the acts, passed in 1866, was not acci-

dental. It was intentional. The same Congress that passed the above named acts, on the same day that it passed some of them, made land grants to certain wagon roads to aid in their construction, and in them retained the old proviso as it stood before July 4, 1866.

In the act of July 4, 1866, it made a land grant to the State of Oregon for the Corvallis and Acquina Bay Wagon Road, and provided that "the said road shall be "and remain a public highway for the use of the Gov- "ernment of the United States free from tolls or other "charges upon the transportation of any property, "troops or mails of the United States." 14 Stat., 86.

On the next day it made a like grant to the same State for the Williamette and Cascade Mountain Wagon Road, and made the proviso in the identical words last above qouted. 14 Stat., 89.

The same proviso had been included in every grant of lands to a wagon road that had ever been passed by Congress prior to July 4, 1866.

12 Stat., 797.

13 Stat., 355.

And there have been no grants since the one to the Williamette and Cascade Mountain Road cited above.

Now, we inquire, why did the Congress of 1866, make this important change in the proviso when applied to railroads, and leave it intact when applied to wagon roads? It must have been because it wished to introduce a new rule for railroads, and was satisfied with the old one for wagon roads.

In quoting the proviso in the grant to the road of the plaintiff, we have inserted in brackets, the word "upon" instead of "for," so that the clause will read "free from all toll or other charge *upon* the transportation of any property," &c. We have done this, because an exami-

nation of all the statutes *in pari materia* makes it apparent that the word "for" was inadvertently used instead of "upon." Every railroad and wagon-road grant, without an exception, prior to the grant to the plaintiff, and every one subsequent thereto in which the formula was used, contained the word "upon." 9 Stat. 466: 11 Stat. 9, 15, 17, 20, 21, 30, 195; 12 Stat. 772, 797; 13 Stat. 64, 72, 355, 527; and 14 Stat. 83, 86, 87 and 89. The grant above cited, contained in 13 Stat. 527, was a grant to the State of Minnesota, and contained the word "upon." The one in question was also a grant to that State. What possible reason could exist for making any difference in the terms of the two grants? It is evident that the change in language was through inadvertence merely, and was not intended to be one in sense, if indeed, there is any distinction in the meaning of the words, in the connection they are used.

The construction which we claim for this proviso, is the one which has been adopted by all branches of the Government. On the 14th of February, 1865, Quartermaster General Meigs wrote to Senator Sherman, then chairman of the Finance Committee of the Senate, and said: "It appears to me that, as the law would not re-
"quire a canal company or a turnpike company, under a
"clause providing that the canal or turnpike road should
"be a highway, free of toll or charge for the transporta-
"tion of property or troops of the United States, to hire
"and move by horse power over the canal, or over the
"turnpike, stage-coaches and wagons for the transporta-
"tion of United States troops and property, so, the similar
"conditions of the grants to States in aid of railroads con-
"structed by companies, could not be fairly interpreted as
"intending that those companies should provide and move
"the railroad engines and cars for the transportation of
"such public property and troops. The railroad remains

"a highway, free for the United States, which, if it finds "it economical or necessary, may put its own engines and "cars thereon, and transport its troops and property "without paying the company for the use of the rail- "road, just as it may put its own boats upon a canal, or "wagons upon a turnpike, and move them free of toll "in a similar case. I need hardly add, that it is not for "the interest of the United States to supply its own roll- "ing stock to do its work upon these land grant rail- "roads, and that it is much more economical to hire the "engines, cars and well-drilled operatives of the com- "pany, by paying for the service, a certain fixed rate for "each man or ton transported by the company."

In the 2d session of the 38th Congress, this subject was considered in reference to the Illinois Central R. R. Co. An amendment was introduced to the army bill, declaring that the Company should transport free, and referred to the Committee on Military Affairs. Cong. Globe, vol. 68, pp. 890–902; 1387–1389.

The Committee reported against its passage, and the Senate acquiesced, by a vote of 30 to 5, and its action was concurred in by the House of Representatives. A joint resolution of a character similar to the amendment, and declaring the intention of the act to be that the companies should transport without charge, was referred to the Senate Committee on Military Affairs, and returned with a report adverse to its passage. Cong. Globe, vol. 68, p. 1045.

The law department of the government has had this question before it and resolved it in favor of the companies. The opinion was written by Assistant Attorney General Hill, and concurred in by Solicitor General Bristow and Attorney General Williams, (14 Opinions, 592.) Mr. Hill said: "By the act of Congress of Septem- "ber 20, 1850 (9 Stat., 466), the Mobile Railroad Com-

"pany received a grant of land in aid of the construc-
"tion of a railroad from Chicago to Mobile, and which-
"was likewise made to the Illinois Central Rail,
"road. The 7th section of that act provides that the
"said railroad and branches shall be and remain a pub-
"lic highway for the use of the Government of the
"United States, free from toll or other charge upon the
"transportation of any property or troops of the United
"States." 9 Stat., 467. "Attorney General Akerman,
"in an opinion given to the Secretary of War, dated
"November 20, 1871, decided that, under this statute,
"the Mobile and Ohio Railroad Company became a
"public highway, within the meaning of this section, for
"its entire length." 13 Opin., 536.

"When railroads were first established, the first idea
"was that of an iron turnpike, over which the public
"would have a right to draw, by steam, their own vehi-
"cles, upon paying a reasonable toll therefor, as was al-
"lowed on turnpikes and canals; and all the earlier
"roads, in their acts of incorporation, had provisions
"looking to this purpose. Experience has demonstrated
"that any such use of a railroad line would be imprac-
"ticable, in the highest degree dangerous, and the con-
"sequence is that the whole design has now been aban-
"doned. But the government still seems to have se-
"cured a right in roads to which it had granted lands,
"to put its own engines and trains upon the line and to
"carry them free of toll."

We invite the attention of the court to the time when the act in question was passed, and to the then policy of the government in reference to making land grants to railroads. This act was passed on the 5th of July, 1864, and a short time before the amended act of the Union

Pacific of July 2, 1864, (13 Stat., 365), which made such extremely liberal provisions for that road, and it should be construed with reference to that policy. This court has well said in the case of the United States v. Union Pacific R. R. (91 United States, 72), that the act making the grant to that road should be viewed in the light of the history of the times when it was passed. Mr. Justice DAVIS, said: "Courts may with propriety, in construing "a statute recur to the history of the times when it was "passed, and this is frequently necessary in order to as- "certain the reason as well as the meaning of the par- "ticular provisions in it. Aldridge v. Williams, 3 How., "24; Preston v. Bunder, 1 Wheat., 20."

Then land grant railroads were favorite objects of legislation. The war was in full progress, and the wants of the government for intercommunication were such as they never had been before, and probably never will be again. Then it was supposed by all persons and all parties that there could be no better disposition of the public lands than to give alternate sections to railroads that would open up communication with remote sections, and make it possible for honest and industrious citizens to make for themselves homes in those distant regions. Then it was thought that the double price that the Government received for the reserved sections, and the great advancement in the wealth, production and resources of the country, and the greater facility for the government to communicate with its remote borders, were more than a full compensation for all that was given the railroads. The grants that were made breathed the spirit of the times. They were extremely liberal, and they were intended so to be. All this should be borne in mind now, when we come to construe what was then enacted. We must carry ourselves back and see what Congress then intended. It matters not what may be the prevailing

sentiment now. We all know that the times have changed; that both political parties have arrayed themselves against all land grants to railroads, and that the Granger and mere politician have sought to outstrip each other in their zeal against them. We humbly submit, that the former policy was the wiser one, and that the day is not remote when all candid men will admit the fact.

Now, when Congress was so liberal in legislating for land grant railroads, is it at all probable that it intended to load each of them with the burden of transporting, without compensation, all the troops and property of the United States that the exigencies of the war, or other wants of the Government might require? And to do this for all time? And to oblige every land grant road thus to transport for its *entire length*, although the grant might apply to but a small portion of it? We think that such a construction would be unreasonable, contrary to the plain language of the act, contrary to the clear meaning of other acts *in pari materia*, contrary to the settled legislative construction of the formula used, contrary to the practical construction given by all the officers of the Government, and contrary to the tenor and spirit of the times in which the law was passed. We therefore expect that it will not obtain in this court.

Respectfully submitted,

SMITH & REDINGTON.
and JAMES SMITH, JR.,
Attorneys for Plaintiff.

Nov. 20th, 1876.

4 Stat at Large 162

1p Mills 878

vol 2 Stat. 614 1862

House Journal

37 Cong 2d ## 409

Supreme Court of the United States.

APPEALED. No. 487.

The Lake Superior and Mississippi Railroad Company

vs.

The United States of America.

In the United States Court of Claims.

No. 11,396.

Saint Paul and Pacific Railroad Company

vs.

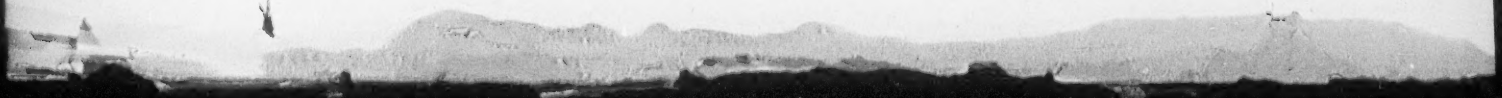
The United States of America.

BRIEF FOR PLAINTIFFS IN EACH OF THE ABOVE CASES.

BY

SHELLABARGER & WILSON.

McGill & Witherow, Printers, 1107 E Street, Washington, D. C.



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THE ST. PAUL AND PACIFIC RAILROAD COMPANY

vs.

THE UNITED STATES OF AMERICA.

The following brief was prepared for the case in the Court of Claims, of the St. Paul and Pacific Railroad Company. After its preparation we became associated with counsel for plaintiffs in the case of The Lake Superior and Mississippi Railroad Company against the United States, pending in the Supreme Court. As this last case is, in its law, identical with the one in the Court of Claims, and will probably decide it, we respectfully submit this argument in the case of the Lake Superior and Mississippi Railroad Company in the Supreme Court. The provision in the 5th section of the act of May 5, 1864, (13 Stats., 65,)

is the one determining the question of the right of recovery in the case in the Supreme Court; and this 5th section is identical (except the word "for" instead of "upon" in the last line of the section) with the provisions of the 3d section of the act of 3d March, 1857, (11 Stats., 196,) which decides the right of recovery in the case in the Court of Claims. Hence, wherever this 3d section is cited in this brief, it is equivalent to a citation of section 5 of the act of 5th May, 1864, (13 Stats., 65,) which controls the case in the Supreme Court.

The appropriation act for the fiscal year ending 30th June, 1875, approved 16th June, 1874, (18 Stats., 74,) provides "that no part of the money appropriated by this act shall be paid to any railroad company for the transportation of any property or troops of the United States over any railroad which, in whole or in part, was constructed by the aid of a grant of public land on the condition that such railroad should be a public highway for the use of the Government of the United States, free from toll or other charges, or upon any other conditions for the use of such road for such transportation; nor shall any allowance be made out of any money appropriated by this act for the transportation of officers of the army over any such road when on duty and under orders as a military officer of the United States. But nothing herein contained shall be construed as preventing any such railroad from bringing a suit in the Court of Claims for the charges for such transportation, and recovering for the same, if found entitled thereto by virtue of the laws in force prior to the passage of this act."

The accounting officers of the Government, whose duty it was to audit and pay for the said services, if they ought to be paid at all, declined to make such payment after the passage of this act of June 16, 1874, on the ground of the prohibition therein contained; and the sole question raised by this case is, whether "the laws in force" prior to the passage of this act of 16th June, 1874, entitle us to recover

for said service. That we are entitled to recover is, we suppose, admitted, unless we are defeated by the provisions of the acts of Congress under which the Lake Superior and Mississippi Company and the St. Paul and Pacific Railroad Company became the grantees of certain public lands.

The only two acts of Congress under which this last-named company acquired public lands are the act of 3d March, 1857, (11 Stats., 195,) and the act of 3d March, 1865, (13 Stats., 526.)

It is the provision of the 3d section of the act of 1857, (11 Stats., 196,) and of the 5th section of the act of 1865, (13 Stats., 527,) which is relied on to defeat the recovery in this suit. These two sections in the respective acts are identical, and in these words:

"That the lands hereby granted to the said Territory or future State shall be subject to the future disposal of the Legislature thereof, for the purposes herein expressed, and no other; and the said railroads and branches shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States."

On the 22d of May, 1857, the territorial legislature of Minnesota passed the act entitled "an act to execute the trust created by an act of Congress entitled an act making a grant of land to the Territory of Minnesota," &c., &c., (see ,) and in this act incorporated the Minnesota and Pacific Railroad Company, and secured to such company certain of said public lands so granted by Congress; and in the 17th section of this act it is enacted that "said railroads so constructed by the application of the proceeds of the lands hereby granted shall *be and remain public highways for the use of the Government of the United States, free from any toll or other charge upon the transportation and military property of the United States*, and the United States mail shall be transported on said road and branch, under the direction of the Post Office Department, at such price as

Congress may by law direct: *Provided*, That until such price is fixed by law of Congress the Postmaster General shall have power to determine the same."

It will be seen that this provision of the 17th section of this act of the territorial legislature as to the road "being and remaining a public highway," &c., is in the words of the said 3d section of the act of Congress of 3d March, 1857, (11 Stats., 196,) and that portion of this 17th section which relates to the transportation of the mails is copied from the 5th section of said act of Congress. (11 Stats., 196.)

By the act of the Legislature of the State of Minnesota approved 10th March, 1862, (see Session Laws of 1862, p. 247,) the St. Paul and Pacific Railroad Company is incorporated, (sec. 2,) and to this company is, by such act, granted and transferred all the rights, benefits, privileges, and property of the Minnesota and Pacific Railroad Company held by the State of Minnesota by virtue of any acts, deeds, agreement or thing by said company done or suffered, or by virtue of any law of the State or of the Constitution thereof, or of the former Territory of Minnesota, or by virtue of any sale of the same or any part thereof to the State on 23d June, 1860," &c., &c., (sec. 1;) and the 6th section provides that any interest of the State, present and prospective, in and to any lands granted by Congress, should be granted to the St. Paul and Pacific Railroad Company, "agreeably to the terms of an act of Congress approved 3d March, 1857."

This is all the legislation in existence relating to the plaintiffs' road and *directly* affecting the question of the right to recover in this St. Paul case.

It is thus seen that this road accepted the grant of public lands made by means of acts of Congress, which acts contained (and coupled with the grant) the provisions in these words: "*The said railroad and its branches shall be and remain public highways for the use of the Government of the*

United States, free from toll or other charge upon the transportation of any property or troops of the United States," and also the additional provision, "*that the United States mail shall be transported over said roads and branches, under the direction of the Post Office Department, at such price as Congress may by law direct.*"

The single question in this case arises on the sense and legal effect of these words in these two acts granting these lands, and in the Lake Superior case, on the sense of the 5th section of the act of 5th May, 1864, (13 Stats., 65;) and that question is whether this condition subsequent attached to this grant of lands merely requires the grantee to suffer its railroad and its branches to be and remain public highways for the use of the United States, free of toll and other charge upon the transportation of any property or troops of the United States, or whether it *requires the grantee to transport this property and these troops, free of charge* not only for the use of the road, but also free of charge for the *service of transporting* such troops and property?

What, then, is the answer to the question, is the plaintiff bound to furnish *transportation free*, or only bound to furnish its *railroad free* for the use of the United States?

To us it seems impossible, after an examination of this provision and the matters throwing light upon the sense Congress designed it should have, to hesitate about the answer to the question. The answer is that the act requires the company to suffer its railroad to be and remain free for the specified use; and does not require the company to transport anything (save the mails) either free or otherwise.

In support of this answer we now suggest the following considerations:

RULES OF INTERPRETATION AFFECTING THE CASE.

1. First of all, the canons of interpretation to which this provision is subjected should be fixed carefully in mind. One of these is found amongst Domat's Rules, (Dwarris,

141, edition of 1871,) in these words: "Laws which favor *what public utility*" * * * "regards *favorably*, as well as those intended for *particular individuals*, ought to be interpreted with all the *liberality* to which these interests are justly entitled in an equitable point of view, and ought not to be interpreted *severely* nor be applied in a manner calculated to prejudice the persons intended to be favored."

That "public utility" at the date of these acts regarded with favor the end and aims of these land grants cannot be doubted. These ends and aims were embodied in the peopleing of our vast territories; the cultivation and improvement of their lands; the supply of homes for the teeming populations born in or coming to our country; the creation of lines of commerce and travel for our own and other people; the building up and acquisition of new States; the furnishing of means of access to and of trade with the older portions of our country and with each other; the augmentation in value of the alternate sections of Government lands not granted by Congress and the general prosperity and welfare of the communities where these roads were created.

Remember carefully that the question on this point, as to what is the rule of interpretation to which this provision shall be subjected, is not how such grants may *now* be regarded, but how they were regarded by Congress when the act was passed; what Congress meant by it when they made it.

On this point we here invoke and lay down alongside of the rule we have just cited from Domat another rule, which we take from United States *v.* Union Pacific R. R. Co., 1 Otto, 72–81:

"In construing an act of Congress the court may recur to the history of the times when it was passed, in order to ascertain the reason for as well as the meaning of particular provisions in it." * * * "No argument can be drawn from the wisdom that comes after the fact. Congress acted with reference to a State of things *believed at the time to exist;* and in interpreting its legislation no aid can be derived from subsequent events."

In the light of what we here take from Domat and from the Supreme Court our first proposition becomes indisputable, and to the case supremely important law, and we repeat it:

This statutory grant is to be studied and construed in the surroundings and lights in which it was created; and, reviewed in these lights, the objects, ends, aims, and public utilities of the act were of the most exalted and beneficient character; and hence this statutory grant "*ought to be interpreted with all the liberality to which these interests are justly entitled in an equitable point of view, and ought not to be interpreted severely nor applied in a manner calculated to prejudice the persons intended to be favored.*"

Another of Domat's maxims is here precisely in point, and is in effect the same as the last named. It is in these words: "Grants and gifts of sovereigns are to be favorably regarded, and to have that extension to which they are entitled from the natural presumption of princely liberality; provided, however, that they are not to be so liberally construed as to injure other individuals" (Dwarris, 141, 142; see also United States *v.* Morse, 3 Story, 87.)

Two other rules of interpretation, to wit, the second and the tenth of the American Rules as laid down in Dwarris, 143 and 144, must be here remembered.

The second rule is:

"It is not permitted to interpret what has no need of interpretation. When an act is expressed in clear and precise terms, when the sense is manifest and leads to nothing absurd, there can be no reason not to adopt the sense which it naturally presents. To go elsewhere in search of conjectures in order to restrain or extinguish it, *is to elude it.*"

The tenth rule is:

"The office of interpretation is to bring the sense out of the words used, and not to bring a sense into them."

To the same effect is the twentieth rule, (Dwarris, 146,) which says:

"Where the language is explicit, the courts are bound

to seek for the interpretation *in the words of the act itself*, and they are not at liberty to suppose or to hold that the Legislature intended anything different from what their language imports."

That the words "other charges," as found after the word "toll" in the 3d section of this act of 1857, mean *other charges in the nature of tolls*, we establish by the application of either one of two rules of interpretation. One is the maxim expressed by the words "*nosciter a sociis.*" (See Sedgwick on Stats., 220; State *v.* McGarry, 21 Wis., 496.) The other and kindred maxim is usually indicated by the words "*ejusdem generis*," for the cases under which rule, see 1 Bouv., 519, tit. "*Ejusdem Generis.*"

WORDS OF THE THIRD SECTION CONSIDERED.

Now, these familiar and binding rules for construing this act being kept in mind, turn to the words of this 3d section of the act of 3d March, 1857, (11 Stats., 196,) which are supposed to bind this grantee of these lands to "TRANSPORT" the troops and property of the United States free of charge. In so turning to the act, the first and most palpable thing seen, in explicit and unmistakable words, on the very face of the act, is that the thing the grantee is to suffer (not *do*) is that the "*railroad*" shall "be and remain a public highway," and is not that the grantee shall "*transport*" property or troops at all, either free or otherwise. To make the act read that the said railroad company shall transport the troops and property of the United States free of charge, is not only not *construction* of the statute—is not only a torture of its meaning, but is exactly and literally a rejection of its express, unambiguous, and controlling words, and a thrusting into their place of words of exactly opposite sense.

The words of the statute are:

(*a*) That the thing to be suffered to be "free" is the "*railroad.*" But this interpretation, which we resist, strikes out "*railroad*" and puts in "*transportation*," and says that *that* is the thing which is to be free.

(*b*) The words of the act require the grantee, after the road is supplied, to *actively do* nothing save to suffer the road to "*be and remain*" free, &c. But the interpretion strikes this language of mere passivity out and thrusts in the words which say that the company shall *actively supply and carry on transportation*, and this for all time and in unlimited quantities, and shall do this absolutely free!

(*c*) The words of the act say that the "use" in effecting the transportation is to be that of the United States. But this interpretation strikes out "the United States" and thrusts in the "railroad company" as the thing which is to "use" the railroad in accomplishing the transportation.

(*d*) The act says that the thing the United States is to be freed from paying is "*tolls* and other" (similar) "charges." The interpretation says it is not "tolls" which this company is to remit and throw off in favor of the United States, but it is a totally different and infinitely more valuable thing, to wit, "freight." "Freight is the sum agreed on for the carriage of goods from one place to another." (1 Bouv., 617; 13 East, 300.) "Toll" is a sum paid *for the use* of something—generally applied to the consideration which is paid for the "use" of a road, bridge, or the like, of a public nature. (1 Bouv., 598.) "Toll," says Simpson *v.* Denison, 13 Eng. L. and Eq., 359, "is a payment for the right of passing along a highway, public or private; it is a payment connected with the passing over, and should probably be reserved with reference to the number of carriages passing over the line." (See, also, South Yorkshire R. R. Co. *et al. v.* Great Northern R. R. Co., 22 Eng. L. and Eq. R., 536.)

It is certainly scarcely possible to conceive or to state a case where the action of the court would be more purely "violence" and not "interpretation," than would be this case, should the courts hold that a statute requiring this grantee to suffer the United States to use its road without paying toll for that use, is a statute requiring the grantee *itself* to use the road, and transport these troops and this

property, and to render these immensely onerous services forever, and without limit in quantity, *free of all charge.*

Such an interpretation would seem clearly impossible, were the rule of interpretation the very reverse of what we have seen it is, and were it that such grants are to be construed so as to injure instead of benefit the grantee. But when the rule is that it shall be construed so as to benefit, and not to destroy or "prejudice" the person "intended to be favored," an interpretation which not only strikes out of the act all its most material and unmistakable terms, and puts in their place words of the very opposite sense, but, in doing this, puts on the "person intended to be benefited" the burdens of transporting, in time of war as well as peace, *all the armies of the United States, and all its property, munitions, and supplies*, without compensation, such an interpretation of this statute becomes, we submit, utterly preposterous.

MEANING, IN THE ACT, OF THE WORD "RAILROAD."

Before turning to considerations more or less extrinsic to the words of this third section, we wish to add a suggestion or two to what we have said about that language of the section which says that "said *railroad and branches* shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon transportation of any property or troops of the United States."

It has, in arguments for the Government on the meaning of the words "railroads and branches," as here employed, been insisted that the word "railroads" means and includes all its rolling stock and furniture, and that the mere iron way is not a railroad.

When we come to examine these words in the light of all surrounding facts we will see that the sense in which the word "railroads" is here used confines it to the "way," or at farthest to the real estate, and does not include the rolling stock, much less all the labor and material required to accomplish transportation. But independently of ex-

trinsic considerations, we insist that the word "railroads," as here used, means the road, the way, the track, its substructure, superstructure, depots, and everything which goes to make up the body of the real estate which constitutes the "railroad."

In support of the proposition that the word "railroad" here means the real estate proper, as distinguished from the equipments of the road, we submit the following:

(*a*) The popular and received import of the word "railroad" is the roadway or real estate, and does not include its movable property or rolling stock and chattels. The third American rule (and it is a cardinal rule for interpreting statutes) is expressed in these words: "The popular or received import of words furnishes the general rule for the interpretation of statutes."

Dwarris, 143; Griffin *v.* Gibb, 1 McA., 212.

(*b*) The legal definition of "railroad" and "railway" is "a road graded and having rails, of iron or other material, for the wheels of carriages to run upon."

2 Bouv., 407.

(*c*) Even were the law settled, as between a grantor and a grantee, that the grant of a "railroad," by use of these words without more, would pass the rolling stock, yet that would throw but little light on the signification of the word "railroad" in this statute, because here the rights of the Government in the road arise by way of *exception or reservation* to the Government out of its grant to the railroad, and such reservation will never be extended by implication, to the prejudice of the grant, beyond what the words of reservation *necessarily* hold back. This is on the familiar principle that is so strongly stated by Story in 15 Peters R., 165, that provisos or exceptions to the granting or enacting clause are construed *strictly*, and take no case out of the enacting clause which does not fall fairly within its terms.

(*d*) But it is by no means true that the law is settled that

the grant of "a railroad," without more words, will carry the rolling stock. On the contrary, Redfield says, (2 Redfield on R. R., 502, 5th ed.,) "But it seems to us somewhat of a departure from the general laws of fixtures in this country, and at variance with generally-received notions upon that subject at present, when carried to the extent of declaring the rolling stock of a railway a fixture. As between the mortgagor and mortgagee, and all subsequent incumbrancers having knowledge of the prior deed, there is no difficulty in allowing the rolling stock of a railway to constitute part of the mortgage of the road, and thus to include the renewal of such stock from time to time, and even additions. *But it is not easy to comprehend how a locomotive engine and train of cars is any more a fixture than any other machine operated by steam, or than a stage-coach even.*"

LIGHT OF SURROUNDING FACTS.

4. We now turn to considerations more or less extrinsic to the wording of this 3d section, as throwing light on the question whether the words of that section compel this company to *transport* free all the troops and property of the United States.

(*a.*) On the very face of this act, in its 5th section, (11 Stats., 196,) is the most conclusive refutation possible of that interpretation of the 3d section which makes such 3d section throw on us the duty of performing the transportation free. This 5th section provides that "*the United States mail shall be transported over said roads and branches, under the direction of the Post Office Department, at such price as Congress may by law direct.*" And the same thing is in the act of 5th May, 1864. (13 Stats., 63.)

Now here is a provision which *does* take in and cover the matter of performing "transportation." It does require that transportation to be accomplished by the grantee of the lands of the United States, and it does regulate the matter of said transportation being compensated or free. The point and bearing of this 5th section on the sense of the 3d section is simply this: that when we find in the

same act, when the act comes to deal with an actual and unmistakable imposition on this grantee of the duty of effecting transportation for the Government, then such act wholly changes its language from that employed in the 3d section, and employs words indisputably and explicitly saying that the "transportation" should be supplied; and such marked and palpable change of the *language* employed is conclusive of the intent to change the *sense* and *substance* of the duties imposed by the two sections.

Is it possible that this difference and change of terms was resorted to by Congress for nothing; and that the 3d section, when it says "the *railroad* shall be and remain a public highway for the use of the United States, free from toll," means exactly the *same* thing as the 5th section means, when it says that the mails of the United States "shall be transported over said roads?" Is it possible to hold that *both* sections, *alike*, require of the company to, itself, perform the transportation, and this although the 3d section is most careful not to even hint at requiring us to transport, but does require a totally different thing; whilst the 5th section is careful to change the language from that of the 3d section, and explicitly requires of us the service of transportation?

It surely is quite impossible to resist the force of this change of language which it was necessary to resort to when transportation was meant to be required; and we are wholly unable to see why these two sections, read side by side, do not completely dispose of this case, by showing that the 3d section was *not* designed to have the *same* meaning as the 5th; nor to require "transportation" at our hands, as the 5th section expressly does. Had the 3d section, like the 5th, meant to require of us transportation, it surely would, like the 5th, have said so.

It is a rule of the law of interpretation, as well as one of obvious common sense, that requires, when a palpable change of language is resorted to in various sections of the same act, or of different acts relating to the same matters,

that such *change of language* shall be held to mean a change in the designs of the provisions.

Rich *v.* Keyser, 54 Pa. St. R., 86.

(*b.*) But again: the several parts of this act put together, as they must be in construing it, (Dwarris, p. 88, n. 8,) conclusively fix the sense of the word "railroads" as used in the 3d section, and show that it means the *road-way* proper, and does not include the rolling stock or things which pass over the road. It will be seen in the 4th section that when "*any continuous twenty miles of any of said roads and branches is* completed," then, upon such completion being duly certified, one hundred and twenty sections of this granted land might be sold. Now, nobody, either when these roads were being made, nor since, has ever claimed that "road" in *this* section meant more than the road-way proper, or required rolling stock to be supplied before the one hundred and twenty sections could be sold. This condition precedent, to wit, completion of twenty miles of "road," is confined to the *road-way* proper, and excludes cars. Who will say that when the *same* act, in its 3d section, comes to provide for a condition subsequent touching this same "road," and to require it to be subject to a specified use, that then the sense of this word "road" has wholly changed, and has now come to signify what it did not in the 4th section, to wit, *both the road-way proper and also the personal property of the corporation?*

(*c.*) Still again: the 5th section uses this word "road" as a thing wholly distinguished from that which passes over the road. The mails are described as "*passing over*" the "*road.*" Here then, again, in the same act, this word "road" has fixed upon it its ordinary sense—is made to be a totally distinct thing from its rolling stock; and we are compelled to either give the same word opposite senses in the same act, and this without the slightest semblance of a reason for the change of sense, or else we are driven to the conclusion that when the act requires us to suffer our "road" to be a public highway, free for a designated

transportation, it does *not* include under the word "road" our personal property and our employees, and does not confiscate the whole of these under that word "*road.*"

(*d.*) Again, as showing that the word "road," in this fourth section, does not take in rolling-stock, so as to require this, too, to be made before the 120 sections could be used, let it be observed that when Congress came to *mean* that the rolling-stock, as well as the roadway, should be supplied before the land grant could be used, it then *said so in words which cannot be mistaken.*"

See case of Union Pacific R. R., 12 Stats., 492, sec. 4.

13 Stats., 359, sec. 6, &c.

In this fourth section, (12 Stats., 492,) before the donated lands could be received, the act required that the company shall have completed "forty consecutive miles of any portion of said railroad and telegraph line, ready for the service contemplated by this act, and supplied it with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, *equipments, furniture, and all other appurtenances* of a first-class railroad."

The use in the present case we make of this legislation is that it is interpretative of the language of our act of 1857, in this, that it shows that when Congress *did* design to require the rolling-stock, &c., to be supplied before the land grant should be available, then Congress said so in the act. Not having said so in the act of 1857, it, unlike this act of 1862, does not require rolling-stock to be first supplied; and hence the word "*railroad*" in neither of the acts is used in the sense of including the rolling-stock of the road. In other words, "railroad," in the legislation of Congress, means the roadway proper, or the real estate, and does *not* take in the furniture of the road.

We now invite attention to some of the controlling facts and conditions by which Congress was surrounded when it made this law and employed these words, requiring this "railroad to be and remain a public highway," &c:

These words, as applied to public works, by which they were required to "be and remain public highways for the use of the Government," had received a known and settled signification at the date of this act of 1857; and in that sense shall the courts construe the words as being employed by Congress. The "practical construction" given through a long series of years by the authorities of the United States to this same provision in other acts, whereby public works, aided by the United States, were made to "be and remain public highways," &c., is a binding and conclusive guide to the interpretation of such words after such practice has fixed their sense.

U. S. Bank *v.* Halsted, 10 Wheat., 63.
Edwards *v.* Darby, 12 Wheat., 206–210.
United States *v.* Recorder, 1 Bl. C. C. R., 218.

And right here the rule construing *as one act*, or system of acts, all laws relating to the *same general system or policy* is of controlling importance in getting at the sense of this third section in the act of 1857. "Where there are different statutes," says Mansfield, (1 Burr., 445,) "*in pari materia*, though made at different times or even expired, and not referring to each other, they shall be taken and construed together *as one system* and explanatory of each other." (Patterson *v.* Winn, 11 Wheat., 386; United States *v.* Collier, 3 Blatchford, 332, 333.)

Domat's 19th rule (see Sedgwick on Stats., 245) is one here having important application, and in its substance is identical with the last two preceding rules just stated. This 19th rule is in these words: "If the doubts or difficulties in regard to the interpretation of a law or a custom are solved by an old usage which has fixed the meanings, and is supported by a uniform series of adjudications, we should adhere to the usage, which is the best interpreter of laws."

The application of these rules of interpreting statutes to the case at bar is this: If we find extending through our legislation for a long series of years provisions making

public works national highways, free for transportation of troops, &c., of the United States, and if such statutes have been "*practically construed*" through a long series of years as *not* requiring the grantee of the United States to perform, free of charge, the Government transportation upon the aided public highway, then that the "practical interpretation" of the statute becomes the true interpretation of this 3d section of the act of 1857.

SOME OF THE STATUTES IN PARI MATERIA.

The first act we have found containing the provision in question is that of 26th May, 1824, (4 Stats., 47, 48,) where the 2d section contains these words: "That the said *canal, when completed, shall be and forever remain a public highway for the use of the Government of the United States, free from toll or charge whatever for any property of the United States or persons in their service on public business passing through the same.*" This is the very same provision precisely with which we deal in the case at bar. Our 3d section is copied, in the same words, from this act of 1824; and if the one does not compel the recipient of the land to perform the transportation, then the other does not.

The same provision, in the same words, is attached to the act of 2d March, 1827, (4 Stats., 234,) granting lands to Illinois for a canal.

The same provision, in the same words, is attached to the act of 2d March 1827, granting lands to Indiana for a canal. (4 Stats., 236.)

Substantially the same provision is attached in the act of 3d March, 1827, (4 Stats., 242,) granting land in aid of the Columbus and Sandusky Turnpike Company.

Substantially the same provision is in the 7th section of the act of 23d May, 1828, granting lands for improvement of the navigation of the Tennessee river, (4 Stats., 290,) and here a river is the highway made free to the United States for transportation.

Identically the same provision is attached to the grant of land to Ohio for extending the Miami Canal to the lake,

as found in the 1st section of the act of 24th May, 1828, (4 Stats., 305,) and section 5, page 306, applies this provision to all the canals in Ohio, and makes them all free public highways for the United States.

The first section of the act of 2d April, 1830, (4 Stats., 393,) expressly authorizes the Ohio Legislature to devote the proceeds of the land granted in the last-named above act of 24th May, 1828, to the making of a railroad instead of a canal on the same line from Dayton north. Thus the Congress has expressly made the canal and the railroad *equivalents* and interchangeable, so far as its policy of alike encouraging and aiding their construction is concerned, and also identical in not subjecting, in these acts where they are so made equivalents, the railroad to any greater duties or burdens for the benefit of the Government than is the canal

The act of 2d March, 1831, (4 Stats., 474, 475,) grants to Florida (or the canal company which may make the canal) certain rights of way, &c., for a canal, and makes the canal a public highway, &c., in the identical words of the 3d section of this act of 1857.

But one of the most conclusive legislative interpretations of the designs of this provision found in this 3d section of the act of 1857, as applied to railroads, is found in the act of 2d March, 1833, (4 Stats., 662,) which provides that "the lands granted to Illinois by the above-named act of 2d March, 1827, may be used and disposed of by said State *for the purpose of making a railroad instead of a canal*, as in said act contemplated:" * * * "*Provided*, That if a railroad is made in place of a canal, the State of Illinois shall be subject to the same duties and obligations, *and the Government of the United States shall be entitled to and have the same privileges on said railroad which they would have through said canal if it had been opened.*"

Now, please note the conclusive significance of this quoted language of the act of 2d March, 1833, as interpretative of our 3d section: 1st, It makes a canal and a railroad identical as to the duties and burdens to be borne

for the consideration of the land grant; 2d, These duties and burdens are the very same, and expressed in the same words (4 Stat., 234) as our 3d section imposes on us; 3d, The privileges which these words secure to the United States are here declared to be privileges "*on* said railroad," thus showing that "railroad" here means the iron-way, as distinguished from all its movable property; and, 4th, The Government is dealt with as the *actor*, which is to exercise and use its privileges "on the railroad," and the idea of the railroad performing the transportation is completely negatived.

It is exactly impossible to read this act of 1833 without knowing, with absolute certainty, that Congress then understood and designed that the words of our third section (4 Stat., 234) should impose the *same* burdens on *canals* and *railroads;* that these burdens should be a right in the United States to transport free "ON" a railroad and "through" a canal; and that the transportation was to be accomplished in both cases alike by the act of the Government, and not by the act of the grantee of the land.

It would be too great a labor to point out every act of Congress where the identical provision of the 3d section of the act of 1857 is found attached to land grants. Some of them will be found at the dates and pages following:

Act of August 8, 1846, sec. 3, 9 Stat., 78, contains the same reservation of the right to use the Des Moines river free, &c., as is reserved in our act in consideration of a land grant.

It is of course perfectly palpable that the words in this act impose on nobody the obligation to transport. If not, why do they do so in our act?

The same thing is true of act of 8th August, 1846, 9 Stat., 83, for improvement of Fox and Wisconsin rivers.

See also act of 20th September, 1850, 9 Stat., 476, section 4. Also see the following:

Act of 10th June, 1855, sec. 4, 10 Stat., p. 9, grant to Mo. for railroads.

Act of 26th August, 1852, sec. 3, 10 Stat., p. 35, grant to Mich. for canal.

Act of 9th February, 1853, sec. 4, 10 Stat., p. 156, grant to Ark. and Mo. for railroad.

Act of 15th May, 1856, sec. 3, 11 Stat., p. 10, grant to Iowa for railroad.

Act of 9th June, 1856, sec. 3, 11 Stat., p. 22, grant to Mich. for railroad.

Act of 11th August, 1856, sec. 3, 11 Stat., p. 31, grant to Miss. for railroad.

Act of 17th May, 1856, sec. 3, 11 Stat., p. 16, grant to Flor. for railroad.

Act of 3d June, 1856, sec. 3, 11 Stat., p. 18, grant to Ala. for railroad.

Act of 3d March, 1857, sec. 3, 11 Stat., p. 196—this being the act of the case at bar.

Act of 3d March, 1863, sec. 3, 12 Stat., p. 773, grant to Kansas for railroad.

CONCLUSIONS FROM THESE STATUTORY PROVISIONS.

Here, then, we have a line of legislation, extending through about one-third of the entire existence of the Republic, making grants of lands for the creation, in our vast, new, and inaccessible Territories, of channels of travel and of commerce, by means of turnpikes, rivers, canals, and railroads. We find these grants coupled with a condition subsequent requiring that these turnpikes, rivers, canals, and railroads shall be and remain alike public highways for transporting Government property free of tolls. We find it simply absurd to hold, as to the condition when attached to *rivers*, that the rivers (or the States they are in) are compelled, by this condition subsequent, to accomplish for the Government the tranportation, and that free. We find that never, in the whole history of this legislation and of its administration through a half of a century, has it ever been claimed or dreamed that this provision, making the turnpikes, roads, canals, rivers, and railroads free for the use of the United States, did more than this, and com-

pelled the turnpikes, rivers, canals, and railroads themselves to carry for the United States free. We find every department of the Government agreeing from the beginning to the end of this half of a century that these "land-grant" channels of transportation ought to be paid for such Government transportation, and paying it. (See 14 Opins., 596.) And then, at the end of the century we see the first law officer of the United States, in a careful, able, and solemn opinion, advise and declare that this provision did *not* require these public works themselves to do the transportation free, but simply made these channels free to the United States.

After and in view of all this we most respectfully submit that the sense and design of this provision in our 3d section is absolutely and irrevocably fixed, and the court cannot now, without violence to the law, reverse its meaning and impose burdens on these public enterprises not dreamed of at the making of these grants, and which, in time of war, would utterly destroy at least some of them.

ACTS WHICH DO REQUIRE TRANSPORTATION.

We now appeal to an additional class of legislation, which is interpretative of this third section, and tends strongly to show that such third section did not impose the burden of performing transportation, without charge, upon the railroad. This legislation is found in those acts which, in terms, require the railroads to perform the transportation, either free or for pay. This change of language from that of this third section (11 Stats., 196) to language requiring the railroad to perform the transportation appears for the first time, we believe, in the 6th section of the Central and Union Pacific Railroad act of July 1, 1862, (12 Stats., 493,) which provides that its land grants are made "on the condition that the company" * * * "transport mails, troops," &c., "upon said railroad for the Government, whenever required so to do by any department thereof," * * * "at fair and reasonable rates of compensation." Here, again, we find that when Congress meant to compel the company

to perform the Government transportation it said so in words which admit of no doubt. When the change of intent came, then the change of language came in our legislation, effectually expressing the new policy and intent.

So you find in the 4th section of act of 13th July, 1866, (14 Stats., 95, 96,) Congress adds to the same language found in our 3d section (11 Stats., 196) these words: "And the same shall be transported over said road at the cost, charge, and expense of the corporation or company owning or operating the same, when required by the United States to do so."

This change of policy and of language is kept up and continued in act of July 25, 1866, (14 Stats., 237,) in the act of 26th July, 1866, (14 Stats., 290.)

The act of 28th July, 1866, (14 Stats., 338,) furnishes, as seems to us, still another convincing legislative interpretation of the old provision contained in the 3d section of our act of 1857. This act of 28th July, 1866, is one to revive and restore the land grant made by the act of 9th Feb., 1853, (10 Stats., 155,) which granted to Missouri and Arkansas, for the railroad from opposite the mouth of the Ohio to points in Arkansas, certain lands; and the 4th section of this act (10 Stats., 156) is identical with our 3d section. (11 Stats., 196.) It will be seen that the reviving act of 28th July, 1866, (14 Stats., 338,) restored the lands "to the *same* custody, control, and *condition*, and made them subject to the uses and trusts, *in all respects*, as they were before and at the time such reservation took effect." Clearly this provision would subject the company taking such land to all the requirements of said 4th section of the original act, (10 Stats., 156,) which is our 3d section. (11 Stats., 196.) And hence, if *that* requires the company to transport troops, &c., free, then it is useless to *add* any such requirement to that above-quoted provision which makes the restored lands subject to the uses and trusts, *in all respects*, as they were before under the act of 9th February, 1853.

But Congress did *not* stop here, but, on the contrary, owing to the now changed policy and the increased value

of lands, Congress adds to our 3d section these words: "*And provided further*, That all property and troops of the United States shall at all times be transported over said railroad and branches at the cost, charge, and expense of the said company or corporation owning or operating the said road and branches respectively, when required so to do by the Government of the United States."

OBJECTIONS CONSIDERED.

We now come to the consideration of the most prominent objections and replies made to our position that the 3d section only makes these railroads public highways, free for occupation and use by the United States, with the right to accomplish its own transportation, without payment of toll or other similar charge for the use of such highways.

The most prominent objections to this position are—

1st. That it is *impracticable* for the Government to so occupy the road in common with the company, and that such use by the United States would destroy the value of the road.

2d. That there is no analogy or similarity between canals, turnpikes, or rivers, on one hand, and railroads on the other; and that hence, even if it be conceded that such language as that of the 3d section, (11 Stats., 196,) when applied to a "pike" or canal, would *only* secure to the United States a use of the road or canal, and would not compel the canal or "pike" to carry free, yet the same language applied to a railroad compels the railroad to carry free.

ATTORNEY GENERAL OF UNITED STATES' REPLY TO THE ABOVE.

Now the material elements of our answer to these objections to our position we choose to make in the words of the Attorney General of the United States, (14 Opins., 596,) who says: "When railroads were first established the idea was that of an iron turnpike over which the public would have the right to draw by steam their own vehi-

cles, upon paying a reasonable toll therefor, as was allowed on turnpikes and canals, *and all the earlier roads, in their acts of incorporation, had provisions looking to this purpose;* Experience has demonstrated that any such use of a railroad line would be impracticable, and, even if it were practicable, in the highest degree dangerous, and the consequence is that the whole design has been now abandoned. But the Government still seems to have reserved *a right* IN *roads to which it had granted lands, to put its own engines and trains upon the line and carry them free of toll.* Instead of doing so, however, the Quartermaster General seems to have established the rule of deducting one-third of the rates fixed for transportation of Government troops and stores, as an equitable composition *for the right possessed by the Government, and which it could at any time enforce,* no matter how detrimental it might be to the general business of the line."

Though this language is that of Mr. Hill, Assistant Attorney General, it will be seen (pages 598, 599) that it was approved by both the Solicitor General and the Attorney General.

In this language is found, first, an exact, explicit, and full approval and affirmation of our position that this 3d section of our act secures the United States the right to use our road, (for the Attorney General is here considering the effect of the identical provision contained in our act of 1857, sec. 3—see page 595 of 14 Opins., also 9 Stats., 466,) and has not the right to compel us to carry anything free; and, second, we have in this language an epitome of that history of railroads and railroad ideas and legislation which led the Congress to pass laws and the States to pass charters *based upon the idea that the railroads could and would be "iron turnpikes, over which the public would have a right to draw by steam their own vehicles upon paying a reasonable toll therefor, as was allowed on turnpikes and canals; and all the earlier railroad charters had provisions looking to this purpose."*

As further confirmatory of this position of the Attorney

General—that railroads were at first created with the idea that others than the company would put cars upon the railway and pay "toll" for its use, and that legislation touching such roads and their tolls must be construed with this idea in mind—we now turn to the case of Boyle *v.* Phil. and Read. R. R. Co., 54 Pa. St. R., 310.

This case was decided in 1865 by Strong, now of the Supreme Court of the United States; and the law and principles of the decision are, we think, conclusive of the case at bar.

Boyle, as stockholder, filed a bill to restrain the company from charging higher tolls for conveyance of passengers and transportation of merchandise than allowed by their charter. The charter was passed in 1833, and with "powers such as may be necessary or incident to the making and management of said railroad and the conveyance of passengers," &c. Also with power, "from time to time, to ordain and *establish rules and regulations for the due ordering* of all traveling and transportation on said road, and for its preservation, with power to alter, repeal, and enlarge or amend said rules," &c.; "and they shall have full power and authority to *prescribe the kinds and descriptions of cars, carriages, or wagons to be used on said road,*" &c.; "and to regulate the speed at which they shall travel," &c.: "*Provided, That the toll on any species of property shall not exceed an average of four cents per ton per mile, nor upon each passenger an average of two cents per mile.*"

The answer filed by the company to the bill of the complainant Boyle, among other things, avers that this prescription of not over four cents per ton per mile, &c., to be charged "as tolls," "did, does, and always was intended to apply exclusively to *that mode of transportation in which the roadway alone was supplied by them;*" and claimed the right to charge for the services of transportation, in addition to said tolls, where the company performed the transportation.

On the 29th of March, 1865, this bill was dismissed with costs—Strong, Judge, delivering the opinion of the court,

which commences page 311. In this opinion the judge, at *Nisi Prius*, decided that this early charter designed to make this company both a railroad company and a transportation company. As the former, it was designed to create a railroad which *others besides the company* might use, put cars and carriages upon, and do their own transportation. (See bottom of page 312, &c.)

The court further held that the word "toll" was used in this charter "in its ordinary signification," and especially so when the ordinary and technical sense are the same. "The legal meaning of the word 'toll' is and always has been well defined. It is a tribute or custom paid for passage, *not for carriage;* always something taken for a liberty or privilege, not for a service. And this is the common understanding of the word. Nobody supposes that tolls taken by a turnpike company or canal company include charges for transportation, or that they are anything more than an excise demanded and paid for the privilege of using the way."

The court proceeds, at length, to decide that this charter suffered the company to charge for services in transporting, and that this was a wholly distinct subject-matter of charge from "tolls" chargeable for the use of the way.

The case was appealed, and was, in 1867, unanimously decided, by the Supreme Court of the State, as it was at *Nisi Prius*—Strong again delivering the opinion, and declaring that the court adopted the opinion of the court below. We beg attention to this entire opinion.

If the court should look to the early charters by the States of railroad companies they will find the truth of the remark of the Attorney General in 14 Opins., 596, that all the earlier charters for railroad companies contained provisions looking to the use of the roadway by others than the company, and the payment of tolls for such use. (See such acts as that to incorporate the Worcester Railroad Company, approved June 12, 1829, sec. 6, p. 271, Laws of Mass., 1828–1831.)

Still another reply to the objection, made in behalf of

the Government, that it has been found impracticable for the Government to use the railroad in common with the company, is found in the doctrines we have already cited from 1 Otto, 81. There the court says "no argument can be drawn from the wisdom that comes after the fact. Congress acted with reference to a state of things *believed* to exist; and in interpreting its legislation no aid can be derived from *subsequent events*."

So, manifestly, in the case at bar, the subsequent discovery that it is impracticable (if it be so) for the Government to occupy the roadway, will not change the meaning of words employed about "*a state of things believed to exist;*" and which, when employed, meant that the Government should have the right to use the roadway free of tolls.

CONCLUSION.

We conclude this brief by a recapitulation:

1. The grant of these lands, and the reservation or exception of the use by the United States of the railroad as a highway for transporting troops, &c., free of toll and other similar charge, is to be dealt with and construed beneficiently and liberally, so as to advance the great public objects and policies these grants were meant to advance, and so as not to prejudice the persons meant to be benefited by the grant.

2. That the letter of the 3d section of the act of 1857, independently of all extrinsic lights, wholly negatives the idea of the making of a company the gratuitous transporter of the troops and property of the United States, in this, (1) that the actor, in exercising said free use of the road, is expressly made to the United States; (2) that the thing the act says shall be furnished free is the use of a railroad, and is not free transportation; (3) that it is freedom from tolls and similar charges the act secures the Government, and is not free transportation; (4) the word "railroad,"

which the act says shall be and remain a public highway, means the roadway, and does not include the rolling stock, so as to require it also to be furnished free; (5) *a fortiori*, the "railroad" required to be furnished does not include all the employees, labor, and material required in accomplishing transportation.

3. The light of extraneous facts bearing upon the true interpretation of this 3d section fix the meaning of such section to be that the United States can demand of the railroad only a free roadway, and not free transportation; and these extrinsic facts are—

(1.) When the act meant to require transportation from the company, as distinguished from a free use of the road, it said so, as in the 5th section, regarding the mails.

(2.) The legislation, *in pari materia*, extending through fifty years, which bestowed public lands on rivers, turnpikes, canals, and railroads, shows, *on its face*, that the same provision as is found in the 3d section of the act of 1857, and as is contained in this legislation about rivers, canals, turnpikes, and railroads, was meant to simply secure free highways for the United States, and was not meant to compel rivers, canals, turnpikes, or railroads to perform transportation free.

(3) These laws, containing this provision for free highways, have for fifty years been administered by all branches of the Government as requiring only free highways, and not free transportation.

(4) The first law officers of the United States have solemnly decided the same thing as has been practiced by the Departments.

(5) The ideas of the period in which the provision originated which is embodied in this 3d section, securing the Government the free use of the roadway, and which ideas were that others than the company making the railroad, would transport on railroads, paying tolls just as they do on canals, turnpikes, and rivers, confirm the interpretation

that it was the roadway and not transportation which the company was to supply to the Government free of tolls.

(6) The authorities, such as the opinion of the Attorneys General, (14 Opins., 596;) Boyle *v.* Phila. and Read. R. R. Co., (54 Pa. St. R., 310;) Simpson *v.* Denison, (13 Eng. L. & Eq., 356,) all confirm the construction which the practice of the Government has, for over fifty years, given to this provision, as requiring not free transportation, but only free highways in our rivers, canals, turnpikes, and railroads which have received Government aid.

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